

## EN BANC

[ G.R. No. 120630, June 28, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARCELO PALERMO Y CARIAS, ACCUSED-APPELLANT.**

### DECISION

#### PER CURIAM:

Another despicable case of incestuous rape, involving appellant Marcelo C. Palermo, has once more reached this Court. He was convicted and was meted out the penalty of death by the Regional Trial Court, Branch 38, of Boac Marinduque in Criminal Case No. 60-94 for having raped his very own 14-year old daughter.

Hence, this automatic review.<sup>[1]</sup>

On September 9, 1994, an Information was filed with the said trial court, docketed as Criminal Case No. 60-94, charging Marcelo C. Palermo with the crime of rape. The Information reads:

"The undersigned Provincial Prosecutor upon sworn complaint originally filed by Merly Palermo y Mandac before the Municipal Trial Court, accuses Marcelo Palermo y Carias, alias 'Celo', of the crime of Rape, committed as follows:

"That on or about the 2nd day of April, 1994 in the evening, in Barangay Nangka II, Municipality of Mogpog, Province of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the accused, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously lie and succeed in having carnal knowledge of his fourteen-year old daughter, Merly Palermo y Mandac, against her will and to her damage and prejudice.

"CONTRARY TO LAW, with the aggravating circumstances of (1) recidivism, accused having been convicted by final judgment of the crime of rape, on August 31 1994, a certified copy of the judgment is attached hereto as Annex "A" and forming part hereof; (2) abuse of confidence and moral ascendancy, the accused being the father and in custody of complainant; and (3) nighttime, which was purposely sought to insure the commission of the offense with impunity."<sup>[2]</sup>

Upon arraignment, Marcelo entered a plea of "not guilty."<sup>[3]</sup> Trial ensued thereafter.

The evidence for the prosecution is anchored on the testimony of complainant 14-

year old Merly M. Palermo, then a high school student. Born on April 30, 1980,<sup>[4]</sup> Merly is the eldest of the five children of appellant Marcelo Palermo and Marilyn Mandac.<sup>[5]</sup> In the evening of April 2, 1994, Merly was with her only brother Marvin (12) and three sisters Maricel (9), Babylyn (6) and Marilyn (3) in their hut (*kubo*) at Barangay Nangka II, Municipality of Mogpog, Marinduque.<sup>[6]</sup> At that time, her mother was in Manila.<sup>[7]</sup> At about 10:00 o'clock in that same evening, Marcelo arrived. He then ordered Merly to spread a mat on the floor - which she complied - about four feet away from her brother and sisters who were already asleep at the adjacent section of the hut separated by a wall.<sup>[8]</sup> When Merly was about to lie down beside her brother and sisters, Marcelo asked her to sleep instead on the mat she had spread.<sup>[9]</sup> Merly tried to persuade him that she sleep with her brother and sisters, but failed.<sup>[10]</sup> Marcelo's vehement insistence by telling her, "*Dine* (referring to where the mat was spread) *na tulog!*"<sup>[11]</sup> was too strong a command to be disobeyed by his daughter. And so while she was lying on the mat and was about to sleep, she sensed that Marcelo was removing her shorts, including her panty.<sup>[12]</sup> Instinctively, she resisted his advances by boxing him and at the same time crying.<sup>[13]</sup> She struggled hard to prevent him from what he was doing to her.<sup>[14]</sup> Merly described her reaction, "*Nagawala* (sic) *po ako.*"<sup>[15]</sup> as she clearly noticed that "*Gusto po niya akong pagsamantalahan.*"<sup>[16]</sup> But Merly's fierce resistance suddenly ended when Marcelo boxed her on the belly, causing her to lose consciousness.<sup>[17]</sup>

When she regained consciousness at dawn of the following day, Merly found herself already beside her brother and sisters.<sup>[18]</sup> Her vagina was then aching and her panty splattered with blood.<sup>[19]</sup> Explaining what happened to her, Merly said bitterly, "*Dahil pinagsamantalahan ako ng aking ama.*"<sup>[20]</sup> She admitted, though, that during her state of unconsciousness as a result of Marcelo's punching on her belly, she did not know what he did to her.<sup>[21]</sup> But Merly insisted that Marcelo boxed her "*(d)ahil gusto po niya akong pagsamantalahan.*"<sup>[22]</sup> That early morning, Marcelo was already out of their hut gathering *tuba* (coconut wine).<sup>[23]</sup>

On June 17, 1994, or more than two (2) months after that sexual assault, Merly was confined at the Marinduque Provincial Hospital at Boac due to profuse vaginal bleeding.<sup>[24]</sup> She was diagnosed to have an incomplete abortion, as indicated in the Medico-legal Certificate<sup>[25]</sup> issued by her attending physician, with the following findings:

"Vaginal bleeding, profuse; shocky with BP 0/0. Uterine enlarged to 2 months size. Vagina admits 2 fingers; cervix admits tip. Curettage done, obtaining placental tissues.

"Diagnosis: Incomplete Abortion, completed by Dilatation and Curettage."

Merly revealed that she was also raped by Marcelo three months back, or on March 13, 1994.<sup>[26]</sup> Thus, he was charged with rape in Criminal Case No. 48-94 to which he pleaded guilty. He was sentenced to suffer the penalty of *reclusion perpetua* by

the same trial court in its order dated August 31, 1994.<sup>[27]</sup>

Merly further testified that after the April 2, 1994 incident, Marcelo again succeeded in forcing her to have sexual intercourse with him against her will "about ten (10) more times" until she was confined at the hospital due to a miscarriage.<sup>[28]</sup> But Merly did not immediately report these sexual ravishments on her to anyone, not even to her mother, because Marcelo threatened to kill her if she did so.<sup>[29]</sup>

It was only after her discharge from the hospital, or on June 23, 1994, that Merly became undaunted in reporting to the authorities Marcelo's sexual assaults on her by executing a sworn complaint<sup>[30]</sup> before the Philippine National Police (PNP) of Mogpog, Marinduque.<sup>[31]</sup> This resulted in the filing with the court below of the corresponding Information for rape against him.

The prosecution rested its case after the trial court admitted its testimonial and documentary evidence which were formally offered without any objection from the defense.<sup>[32]</sup>

At the start of the presentation of evidence for the defense, the defense counsel, Atty. Diosdado Sotto, Jr., manifested in open court that he is "presenting the accused for the purpose of x x x denying the allegation in the Information regarding the alleged rape committed against Merly Palermo."<sup>[33]</sup>

But when Marcelo was asked the first direct examination question as to what he can say about the charge against him, he boldly and categorically admitted having raped his daughter, saying, "*Nagawa ko po sa anak ko and panggagahasa ko kaya ako nakademanda.*"<sup>[34]</sup> This prompted the defense counsel to ask a follow-up question: "Are you in effect saying that you committed that alleged rape on April 2, 1994?"<sup>[35]</sup> Again, Marcelo gave an emphatic affirmative answer,<sup>[36]</sup> He also admitted that at the time of the rape incident on April 2, 1994 he "was drunk," having taken one-half (1/2) gallon of *tuba*.<sup>[37]</sup> In confessing he committed the crime, Marcelo stressed no one has threatened or coerced him.<sup>[38]</sup>

The public prosecutor, obviously, did not cross-examine Marcelo anymore. But the court *a quo*, bearing in mind the imposable penalty of death for such crime under Republic Act No. 7659, asked him some questions to determine if he understood the consequences of his confession. Thus, in reply to the query by the trial court, Marcelo further declared that he knew he will be penalized with death by reason of his confession, but despite such penalty he is not changing his avowal because, in his own words, "*Ako po'y nagkasala kaya aaminin,*"<sup>[39]</sup> He confirmed that Merly is truly his eldest daughter.<sup>[40]</sup> Long before this incident happened, he has been drinking *tuba* and consumes, one-half (1/2) gallon everyday.<sup>[41]</sup>

Upon formally offering Marcelo's lone testimony, the defense rested its case and prayed that his "judicial confession be considered as analogous to the mitigating circumstance of voluntary plea of guilty."<sup>[42]</sup>

The case was then considered submitted for decision.

On May 9, 1995, the trial court rendered its decision<sup>[43]</sup> convicting Marcelo of the crime charged. The decision further states that **"with the attendant aggravating circumstances of (1) recidivism, having been convicted for rape on August 31, 1994 in Crim. Case No. 48-94, and (2) abuse of confidence and moral ascendancy, without any mitigating circumstance to offset the same, MARCELO PALERMO y CARIAS is hereby sentenced to suffer DEATH penalty** prescribed under (Section 11 of Republic Act No. 7659)."<sup>[44]</sup> Concerning the matter of damages, the decision holds: **"There being no declaration for moral damages, this court found no basis to award the same."**<sup>[45]</sup>

In his brief filed with this Court, appellant Marcelo Palermo, thru counsel, claims that the trial court "erred in sentencing (him) the maximum penalty of death **despite his voluntary admission of guilt.**"<sup>[46]</sup>

Appellant's counsel argues that "for being man enough to admit his guilt (and) for not giving the court a hard time to determine his culpability, the accused-appellant deserves a reduction of penalty for the sake of compassionate justice. *Reclusion perpetua* would be good enough for him, to pay his wrongdoing to his daughter in particular and to society in general,"<sup>[47]</sup>

Thus, the only issue raised here by appellant is whether his confession of guilt, made in the course of his testimony and after the prosecution has rested its case, is a mitigating circumstance; and if so, whether the penalty of death can be reduced to *reclusion perpetua*.

Although this is the sole question appellant has presented before us for resolution, it is, nevertheless, a well-established rule that in a criminal case, an appeal to the Supreme Court throws the whole case open for review, and it becomes the duty of the Court to correct such errors as may be found in the appealed judgment, whether they are made the subject of assignments of error or not.<sup>[48]</sup>

Before resolving the said issue which pertains to the penalty imposed upon appellant, we deem it proper in this automatic review to first determine whether the judgment of the trial court finding him guilty of rape as charged is correct.

In rape cases, we have consistently held that the victim's **lone** testimony, if credible and free from fatal and material inconsistencies and contradictions, can be the basis of an accused's prosecution and conviction for such crime.<sup>[49]</sup> This is so because, by the very nature of the offense, only the offender and the victim can normally testify to its occurrence.<sup>[50]</sup> Consequently, the issue in cases of rape usually boils down to the credibility of the victim.<sup>[51]</sup>

After having meticulously examined the evidence presented by the prosecution and carefully weighed the testimony of Merly, the complainant-victim, we find her to be a credible witness and her story untainted with bias, inconsistencies and contradictions. In bravely telling the court her heart-rending tale of defloration - which we have scrupulously narrated earlier - she gave a positive, candid and straightforward account of how she, at a tender age of 14 years, was ravished by her very own father on April 2, 1994. Such a harrowing narrative coming from a very young and innocent barrio lass is, undoubtedly, reflective of an honest and

unrehearsed witness.

Specifically, we have noted Merly's candidness when she admitted not having actually seen her father Marcelo ravished her during her unconscious state on the night of April 2, 1994. But we accord full faith and credence on her insistence that no other man but her father had sexually assaulted her on that dreadful night.

The following chain of events as narrated by Merly lucidly and logically lead to the conclusion that appellant did have carnal knowledge of his daughter against her will: 1) Appellant did not allow her to sleep with her brother and sisters in the adjacent room of their hut on the night in question. 2) When Merly was about to sleep on the mat as ordered by appellant, she noticed him removing her shorts and panty, whereupon she boxed him to stop his advances. 3) But appellant, earnestly desirous to pursue his evil motive, instead punched Merly on her belly, rendering her totally unconscious. 4) Upon regaining consciousness, Merly felt her vagina was aching and noticed her panty was bloody. 5) Appellant threatened Merly that he would kill her if she reports the horrifying incident to anyone, including her mother. 6) Although he pleaded "not guilty" during arraignment, appellant, apparently conscience-stricken, categorically admitted having committed the crime charged when testifying for his defense.

The trial court itself likewise found Merly a trustworthy witness. And rightly so. Its findings on the credibility of witnesses are even accorded great respect and weight on appeal as it is in a better position to decide the question of credibility, having seen and heard the witnesses themselves and observed their behavior and manner of testifying.<sup>[52]</sup>

Now to the penalty for the crime of rape committed by appellant.

The Information specifically alleges, *inter alia*, that in the evening of April 2, 1994, "**Marcelo Palermo y Carias**" had employed "force, violence and intimidation x x x and succeed(ed) in having carnal knowledge of **his fourteen-year old daughter, Merly Palermo y Mandac**, against her will and to her damage and prejudice."

The allegation in the Information concerning the **minority** of the victim (who was under 18 years of age at the time the crime was committed) **and** her **relationship as daughter of the offender**, are considered *special qualifying circumstances*<sup>[53]</sup>, which would categorize the crime as *qualified rape* under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act NO. 7659,<sup>[54]</sup> the prescribed penalty of which is death.

These special qualifying circumstances of minority and relationship have been pleaded in the Information and duly proven by the prosecution. These were even admitted/confirmed by appellant himself.

While the penalty of death imposed on appellant is correct, since that is what the aforecited law prescribes, we disagree, however, with the trial court's reasoning in the dispositive portion of its decision that such penalty is likewise imposed because of the presence of "aggravating circumstances of (1) recidivism x x x and (2) abuse of confidence and moral ascendancy, without any mitigating circumstance to offset the same x x x."