

## EN BANC

[ G.R. Nos. 126538-39, November 20, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RODELIO MARCELO, ACCUSED-APPELLANT.**

### DECISION

**QUISUMBING, J.:**

On automatic review is the decision<sup>[1]</sup> of the Regional Trial Court of Pasig City, Branch 68, finding accused-appellant Rodelio Marcelo guilty in two out of three cases of rape and sentencing him to death in one case and *reclusion perpetua* in another.

Appellant was originally charged under three separate Informations:

Criminal Case No. 107976-H:

That on or about the 10<sup>th</sup> day of September, 1994 in the City of Pasig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of threats, force and intimidation did then and there wilfully, unlawfully and feloniously have carnal knowledge to (sic) the complainant, Cecilia Osorio, against her will and consent.

CONTRARY TO LAW.

Criminal Case No. 108000-H:

That sometime prior to March 31, 1995, in the City of Pasig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of threats, force and intimidation did then and there wilfully, unlawfully and feloniously have carnal knowledge to (sic) Mary Cyndel Marcelo, his own daughter, a minor 4 years of age, against her will and consent.

CONTRARY TO LAW.

Criminal Case No. 108001-H:

That sometime prior to March 31, 1995, in the City of Pasig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of threats, force and intimidation did then and there wilfully, unlawfully and feloniously have carnal knowledge to (sic) Mariedel<sup>[2]</sup> Marcelo, his own daughter, a minor 3 years of age, against her will and consent.

## CONTRARY TO LAW.

During his arraignment, appellant pleaded not guilty to the charges. Thereafter, trial on the merits ensued.

The first witness for the prosecution was DR. OWEN J. LEBQUIN, medico legal officer of the PNP Crime Laboratory. He testified that he examined Cecilia Osorio, Mary Cyndel and Mariedel Marcelo and his findings reveal that both Cecilia and Mariedel suffered lacerations in their hymen and were in non-virgin states. On the other hand, Mary Cyndel's hymen was still intact and she was, in fact, a virgin.<sup>[3]</sup>

SPO1 LARRY PABLO testified that he was one of the police officers who apprehended appellant and who investigated the case.<sup>[4]</sup>

ADELAIDA REYES, principal and guidance counselor of Silahis Katarungan Elementary School, was presented to corroborate the testimonies of Cecilia and Cynthia on how Mary Cyndel and Mariedel first related their harrowing experiences at the hands of their father.<sup>[5]</sup>

Appellant's wife, MA. CYNTHIA IMELDA MARCELO, testified that she is the sister of complainant Cecilia Osorio and the mother of Mary Cyndel Marcelo and Mariedel. She recalled that she and appellant lived in Santolan, Pasig, on September 10, 1994 and transferred to Sta. Teresita Village in Parang, Marikina, on September 16, 1994. Her sister, Cecilia, used to live with them but left them on September 10, 1994. Thereafter, Cecilia would just go to their house occasionally to "change her dress". Worried, Cynthia wrote their mother in Bicol to ask her to come to Manila to talk to Cecilia. On March 24, 1995, their mother and Cecilia coincidentally met in her house. Cynthia remembered that on March 31, 1995, she asked Cecilia to stay so they could talk but the latter refused and went back to her boarding house. Cynthia followed her and confronted her sister about her unwillingness to stay with them. Cecilia revealed that appellant raped her. Upon hearing this, Cynthia brought Cecilia to her home in Sta. Teresita. There appellant admitted to her that he raped Cecilia but only because, according to him, "*pinasukan ng demonyo ang utak ko*" (the devil possessed my brain). Appellant then left them.

Cynthia recounted that on April 11, 1995, appellant returned and asked her if they could still live together. After she refused, appellant left her a letter to give to his parents. Confused, Cynthia decided to call her Auntie Adelaida<sup>[6]</sup> Reyes for advice. As they spoke, they were rudely interrupted by her daughters, Mary Cyndel and Mariedel, who kept on talking about a "snake" which their father used when he played with them. According to them, this "snake" was placed by their father inside their mouths, in their anuses and their private parts. Curious, Adelaida took them inside a room and asked the younger brother of Cynthia to remove his shorts. Mary Cyndel pointed to the boy's penis and told the elders that the "snake" of her father was much bigger than the "snake" of the boy. Cynthia brought her children to Camp Crame Crime Laboratory to have them examined. Upon reaching said laboratory, Mary Cyndel pointed to a sketch of a male's genitalia and told her mother that it was like her father's "snake."<sup>[7]</sup>

CECILIA OSORIO, sister-in-law of appellant, testified that she stayed in her sister

Cynthia's home while she was working for Purefoods. At around 3:00 A.M. of September 10, 1994, while asleep, something touched her body. When she opened her eyes, she saw appellant near her, naked. She pleaded with him not to pursue whatever he had in mind, but he just poked a knife at her and covered her mouth to prevent her from shouting. His threat to kill her terrified her. Appellant removed his hand from her mouth and started undressing her. After ejaculating inside her, appellant sat down and repeated his threat to kill her and her sister if she reported what he did to her. Days after, Cecilia left and lived with a friend somewhere in Parang, Marikina.<sup>[8]</sup>

MARY CYNDEL MARCELO, the four-year-old daughter of the couple, testified that her father often played with her and her sister Mariedel, using his "snake". He would place this "snake" inside their mouths, anuses and private parts while all of them were naked. With Atty. Mateo posing as appellant, Mary Cyndel pointed to the area of the groin where he asked to point where her father's "snake" was. She also testified that whenever her father placed this "snake" inside her mouth and that of Mariedel's, it emitted a worm-like substance from its head and then it dies. The said worm-like substance was described by Mary Cyndel as "*malagkit*" and "*lasang sipon*."<sup>[9]</sup>

The last prosecution witness was ESTRELLA RAGUNOT. She testified that she was a friend of Cecilia Osorio with whom the latter lived after she was sexually abused by appellant. She also narrated the stories told to her by Cecilia regarding the latter's experience.<sup>[10]</sup>

In his defense, appellant RODELIO MARCELO denied the accusations against him. He alleged that Cecilia's complaint could have been motivated by his refusal to succumb to her sexual advances. He also opined that his wife might be the one responsible for the false accusations of their daughters as she wanted to get rid of him so that she may live with her lover, a certain Jack Victorino.<sup>[11]</sup>

MONINA MARCELO, cousin of appellant, was also presented to establish the fact that Cecilia had told her of her sexual experience in Singapore, and that Cecilia was a promiscuous woman who had sexual contacts with her lovers.<sup>[12]</sup>

SINFROSA<sup>[13]</sup> MENDOZA, aunt of appellant, testified that appellant's wife and a certain Jack Victorino were indeed lovers.<sup>[14]</sup>

On August 6, 1996, the trial court promulgated its decision, disposing as follows:

WHEREFORE, in view of the foregoing, the Court hereby renders judgment finding accused RODELIO MARCELO GUILTY beyond reasonable doubt of two counts of Rape and sentences him to suffer:

1. In Criminal Case No. 107976-H, the penalty of *reclusion perpetua*; and
2. In Criminal Case No. 108001-H, the penalty of death.

He is further ordered to pay complainant Cecilia Osorio and Mariedel Marcelo the sum of Fifty thousand pesos (Php 50,000.00) each as moral damages; the sum of Fifty thousand pesos (Php 50,000.00) each as

exemplary damages and cost of suit.

Insofar as Criminal Case No. 108000-H is concerned, the Court hereby ACQUITS the accused for insufficiency of evidence.

In view of the penalty imposed in Criminal Case No. 108001-H, let the records of this case be elevated to the Supreme Court for automatic review.

SO ORDERED.<sup>[15]</sup>

Appellant raises the following errors in his brief:

## I

THE TRIAL COURT ERRED IN AFFORDING FULL CREDENCE TO THE EVIDENCE ADDUCED BY THE PROSECUTION THRU ITS WITNESS-COMPLAINANT CECILIA OSORIO TO SUPPORT A CONVICTION AGAINST THE ACCUSED IN CRIMINAL CASE NO. 107976-H.

## II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT ON THE BASIS OF THE TOTALITY OF ALL THE EVIDENCE ADDUCED BY THE PROSECUTION IN RESPECT TO CRIMINAL CASE NO. 108000-H (sic)<sup>[16]</sup>

The issues here concern the credibility of witnesses and the sufficiency of the evidence for the prosecution.

Appellant describes the testimony of Cecilia as full of half-truths, contradictions and improbabilities. He assails the delay of six months which Cecilia allowed to pass before she reported the alleged rape. He insists that Cecilia's complaint is nothing more than an act of "vengeance" for his refusal to give in to her sexual propositions. On the alleged rape committed against Mariedel, appellant attacks the paucity of evidence to prove the same. He asserts that the testimony of Mary Cyndel was too fluid, precise and was promptly given after each question, giving the impression that the responses were rehearsed and memorized. Appellant also points out that the cross-examination of Mary Cyndel reveals that the "snake" she constantly refers to is not the sexual organ of her father. Appellant likewise dismisses the findings of Dr. Lebaquin with regard to the lacerations found in Mariedel's private parts for the simple reason that he was not able to identify the perpetrator thereof. Finally, appellant insists that the testimonies of Cynthia, Cecilia and Adelaida are all hearsay and deserve no probative value.<sup>[17]</sup>

The Office of the Solicitor General (OSG), for the State, avers that there is no reason to detract from the trial court's finding of credibility on the part of the prosecution's witnesses. The OSG argues that delay and vacillation on the part of rape victims in reporting their sordid experience do not impair their credibility, especially when such delay is grounded on fear. It also points out that the testimony of Mary Cyndel was carried out in a candid, straightforward and innocent manner as only a child of her age can, and it deserves utmost credence and belief.<sup>[18]</sup>

In resolving cases of rape, this Court is guided by the following principles: (a) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense;<sup>[19]</sup> and (d) the evaluation of the trial court judges regarding the credibility of witnesses deserves utmost respect on the ground that they are in the best position to observe the demeanor, act, conduct, and attitude of the witnesses in court while testifying.<sup>[20]</sup>

Guided by these principles and after a careful review of the records of this case, we find no reason to overturn the conclusion reached by the trial court concerning the guilt of the accused-appellant.

The testimony of Cecilia Osorio was given in a candid and straightforward manner leaving no room for doubt that she is telling the truth. Appellant tried to discredit her testimony by pointing out that it took Cecilia more than six months before she reported the incident to her family and, eventually, to the police. A delay of six months under the circumstances present in this case, however, is not enough to taint Cecilia's credibility. In the first place, she adequately explained why it took her a long time before she reported the incident. According to her, she was afraid and confused. This is expected considering that the person who raped her was her brother-in-law. Further, she had just gone through a harrowing experience. We cannot categorically state what might have entered the thoughts and minds of a young lady who had such an experience, from the time she was raped up to the time she decided to come out in the open. We are certain, however, that delay and her reluctance to make public the assault on her virtue is neither unknown or uncommon. In *People vs. Malagar*, 238 SCRA 512 (1994), the Court said:

Vacillation in the filing of complaint by rape victim is not an uncommon phenomenon. This crime is normally accompanied by the rapist's threat on the victim's life, and the fear can last for quite a while. There is also the natural reluctance of a woman to admit her sullied chastity, accepting thereby all the stigma it leaves, and to then expose herself to the morbid curiosity of the public whom she may likely perceived rightly or wrongly, to be more interested in the prurient details of the ravishment than in her vindication and the punishment of the rapist. In *People vs. Coloma* (222 SCRA 255) we have even considered an 8-year delay in reporting the long history of rape by the victim's father as understandable and so not enough to render incredible the complaint of a 13-year old daughter.<sup>[21]</sup>

Cecilia's fear is a viable reason for her long silence. This should not be taken against her. It is fear, springing from the initial rape, from which the perpetrator hopes to build up a climate of extreme psychological terror, which would numb his victim to silence and submissiveness.<sup>[22]</sup> And even if delay could not be attributed to death threats and intimidation, the failure of complainant in promptly reporting the offense to the proper authorities would not destroy the truth *per se* of the complaint.<sup>[23]</sup>

The attempt of the appellant to picture Cecilia as an indiscreet and sexually