

## EN BANC

[ G.R. No. 134309, November 17, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROBERTO MARIANO ALIAS ATO, ACCUSED-APPELLANT.**

### D E C I S I O N

**BELLOSILLO, J.:**

ROBERTO MARIANO alias *Ato* was accused of raping five-year old Khristine *Dandan* Custan before the Regional Trial Court of Pasig City. On 7 May 1998 the court *a quo* found him guilty as charged and sentenced him to death;<sup>[1]</sup> hence, this automatic review of his conviction.

The family of Khristine Custan rented a room in a small bungalow owned by accused Roberto Mariano where his family lived in an adjoining room. Only *lawanit* and flattened carton boxes divided the two quarters. Mariano's wife worked in Malaysia. Like typical neighbors in depressed areas, with nowhere else to spend their leisure time, Khristine and her siblings would go to the room of the Marianos to play or watch television. It was on one of these occasions that the crime charged supposedly transpired.

On 17 February 1995, at around 1:00 o'clock in the afternoon, four-year old Khristine<sup>[2]</sup> went to the room of Roberto Mariano whom she called *Kuya Ato* to play with his son "JC."<sup>[3]</sup> Roberto was watching television in his room together with his children. Khristine and "JC" were playing in the *sala* with the latter's toy jeep while his sister and a brother were washing dishes.<sup>[4]</sup> After some time, Roberto gave money to his children and told them to buy some *chicheria* from the nearby convenience store. The children left leaving behind Khristine and Roberto alone in the house. According to Khristine, Roberto carried her to his bed, removed her clothes as well as his own, and inserted his penis into her vagina. She felt pain although the contact was brief. Then he carried her again and asked her to sit down beside him. He called for his children and told Khristine to put on her clothes and go back to the room. When the children arrived he asked his older daughter to buy beer for him.<sup>[5]</sup>

As the whole incident was taking place, Evelyn C. Custan, Khristine's mother, was in the adjoining room attending to her other children. According to Evelyn, when Khristine returned she noticed that she was wearing her panty inside out. When she asked Khristine why, she answered that it was her *Kuya Ato* who put it on. Evelyn claimed that Khristine, upon further questioning, told her that her *Kuya Ato* inserted his finger inside her vagina and then his penis afterwards.

The electric power failed at this moment so Evelyn rushed to a neighbor's house to borrow a flashlight and returned immediately to examine Khristine's private part.

According to Evelyn, she noticed bloodstains and bruises in Khristine's vagina, prompting her to report the incident to the police station near her home. The police however did not believe her story so they were refused assistance. Evelyn then brought Khristine to the Taguig Police Station where they gave their statements, after which, mother and daughter led the police officers to Roberto's residence; however, he was not there.

Evelyn then brought Khristine to the PC Crime Laboratory Service in Camp Crame for medical examination. The medico-legal report of Dr. Jesusa N. Vergara, Khristine's examining physician, contained the following CONCLUSION: "Subject is in virgin state physically x x x x no external signs of application of any form of violence. REMARKS: Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa."<sup>[6]</sup>

The following day, 18 February 1995, Evelyn and her family moved out. The Marianos also followed suit. Thus, the warrant for Roberto's arrest could not be served.

On 26 December 1996 or more than a year after their last meeting, Roberto unexpectedly appeared at Evelyn's place. Evelyn wasted no time in calling for the police and Roberto was arrested.

Testifying alone in his defense, Roberto denied the charge. He explained that at about 11 o'clock in the morning of 17 February 1995 he arrived home from his work as a taxi driver to prepare food for his children; that while he was cooking, *Dandan* (referring to Khristine) went to his room to watch television. *Kisay* (Khristine's mother) joined them but watched only through the window.

After his lunch Roberto laid down on his bed and talked to Evelyn as both watched television, while Khristine and Roberto's children were playing. Their conversation lasted until 1:15 in the afternoon just after the noontime TV show. Evelyn retired to her room afterwards.

Meanwhile, the two (2) youngest children of Roberto - Ezequiel and Chonalyn - playfully sat on their father's belly and prodded him to play with them. Tired and sleepless the night before from long hours of driving a taxi, Roberto tried to discourage the children but they insisted on playing "horsie-horsie" with their father for about fifteen minutes. Khristine also joined them. To dissuade the children from further disturbing him, he gave P2.00 to each of them including Khristine so that they could play outside and leave him alone to sleep.

At about four or five o'clock in the afternoon, according to Roberto, he was interrupted in his sleep by his daughter Cathy who told him that Evelyn wanted to see him in her room. There, Evelyn confronted him why Khristine was already wearing her "shorts"<sup>[7]</sup> inside out. After Roberto professed ignorance, Evelyn threatened to have him and his family killed by her brother whom she claimed to be a member of the New People's Army (NPA). Sensing that he was being accused of having sexually molested Khristine, Roberto advised Evelyn to have her daughter physically examined before making such an accusation. When Evelyn did not respond, Roberto returned to his room as he was having a headache and slept until 5 o'clock the following morning.

On 18 February 1995 Gloria Cidagan, Roberto's mother, arrived to fetch her grandchildren after hearing from Cathy that Evelyn had threatened to harm them and that she would file a case against their father. Roberto merely shrugged off his mother's report. Although he did not believe at once that Evelyn would carry out her threat, he became apprehensive later in the evening when Evelyn packed up their things, destroyed the door of their rented room and left. Then Roberto realized that the threat to the security of his family was real.

The next day, 19 February 1995, Roberto went to his mother's place to confirm from his children the things Evelyn had told them. He drove until 9:30 p.m. when his taxi developed engine trouble. He brought his cab to the garage and reported the matter to the owner. He also told the owner that he was going to stop driving the taxi temporarily; instead, he decided to drive a passenger jeepney so he could be nearer his mother's house, thus affording him a better opportunity of protecting his family in case Evelyn made good her threats.

Roberto learned later from his friend Rene Montes that Evelyn filed a rape case against him. This was confirmed by Roberto's sister-in-law who was shown by Evelyn a warrant for Roberto's arrest. Roberto immediately informed his wife about the charge.

When Roberto's wife, Melinda Mariano, arrived from Malaysia, she approached Evelyn about the case. According to Roberto, Evelyn demanded from the spouses P50,000.00 in exchange for dropping the charges. When Roberto's mother learned about the offer, she offered to sell their house, but Roberto dissuaded her saying that she was not going to give Evelyn a single centavo as he did not do anything wrong.

On 26 December 1996 Roberto went to the house of Evelyn in order to ask her about the case she filed against him. But before he could do so Evelyn called for the police who promptly arrested him.

On 9 June 1997 Roberto was arraigned and trial ensued. However, soon after Evelyn executed a "*Salaysay ng Pag-uurong ng Demanda*" paragraphs 2 and 3 of which read: 2. *Na aking nakita sa Medico Legal Report na ang aking anak ay hindi naman pala nagalaw ng kahit kanino (sic)*; 3. *Na matapos akong makipag-usap sa inakusahan, aking nabatid na hindi lamang kami nagkaintindihan sa pangyayari x x x* When confronted with this document on cross-examination, Evelyn explained that she had Atty. Mendoza of the Public Attorney's Office (PAO) prepare the document after taking pity on Roberto's wife, who frequently visited her and begged her to drop the charges. When the trial court noted that the document was not subscribed to by the public prosecutor, Evelyn further explained that the prosecutor did not want her to sign and advised her instead to think the matter over. Afterwards, she decided to pursue her case.

On 26 May 1998 the trial court found the accused Roberto Mariano alias *Ato* guilty of statutory rape and sentenced him to death and the accessory penalties consequent thereto, and ordered him to pay private offended party Khristine C. Custan P50,000.00 by way of civil indemnity, plus the costs.

Accused-appellant Roberto Mariano now insists that the prosecution failed to prove

his guilt beyond reasonable doubt. In support of his claim, Mariano asserts that the testimony of Khristine declaring that he inserted his penis into her vagina because of which she suffered pain, and the claim of Evelyn that she discovered blood and bruises in Khristine's vagina, were both belied by the medico-legal report of Dr. Jesusa N. Vergara of the PC Crime Laboratory which indubitably showed that Khristine was physically a virgin, that her hymen was intact, and that there were no external signs of the application of any form of violence. He further claims that the "*Salaysay ng Pag-uurong ng Dimanda*" executed by Evelyn C. Custan clearly proves his innocence of the crime charged as she would not have wavered in her resolve to pursue the case if their accusation of rape was indeed true.

We reiterate at the outset that the evaluation of testimonies of witnesses by the trial court is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain circumstances of substance or value which, if considered, might affect the result of the case. In prosecutions for rape, this Court in the evaluation of the evidence has always been guided by the following considerations: (a) an accusation of rape can be easily made, is hard to prove, but harder to defend by the party accused, though innocent; (b) in view of the nature of the crime where only two persons are usually involved, 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 cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[8]</sup> In all criminal prosecutions, without regard to the nature of the defense which the accused may raise, the burden of proof remains at all times upon the prosecution to establish his guilt beyond reasonable doubt.<sup>[9]</sup>

With these guidelines in mind, we proceed with the instant case. Once again, it is up to this Court to see to it that only the strictest standard of evidence has been met in order to justify the taking of a life. The exacting standard of proof beyond reasonable doubt acquires more relevance in rape charges which are easy to make but harder to prove and harder still to defend by the party accused who may be innocent.<sup>[10]</sup> This Court will not condemn a person to his death if there exists the slightest hint of reasonable doubt as to his guilt. In reviewing the factual circumstances of the instant case, the Court has seen doubt cast on the evidence of the prosecution, sufficient to warrant a reversal of his conviction.

The trial court convicted the accused of statutory rape. In so doing, it relied mainly on the testimonies of complaining witness Khristine Custan and her mother Evelyn C. Custan. But, in reviewing this case, it is imperative to ensure that their testimonies can withstand the strictest judicial scrutiny.

This Court is not unaware of cases where we held that it was unthinkable for a youthful rape victim to undergo the humiliation of a public trial unless she was merely protecting her honor and bringing to justice the person who raped her.<sup>[11]</sup> However, this does not remove the necessity of scrutinizing the testimony of the complaining witness with extreme caution. The trial court was probably convinced that Khristine gave a truthful account of what actually transpired during her ordeal considering her demeanor, her apparent immaturity, youthfulness and lack of malice. But we are not as easily convinced, as we are conscious of our constitutional duty to exact proof beyond reasonable doubt before convicting an accused. Although we do not generally disturb conclusions of the trial court on

credibility of witnesses, we will do so in this case as the lower court has clearly overlooked certain facts of substance. An examination of Khristine's testimony and demeanor reveals spatters of irregularities that the lower court apparently overlooked, but are simply too glaring for us to ignore.

Khristine told the trial court that Roberto carried her to his bed, removed her clothes as well as his own, and inserted his penis into her vagina. When asked by the prosecutor what she felt at this time, the victim replied, "It was painful, sir."<sup>[12]</sup> It is highly inconceivable that Khristine would not cry for assistance considering that her mother was only in the next room that was separated only by *lawanit* and flattened carton boxes from that of Mariano where she was supposedly sexually abused. Nowhere in her entire testimony was there any indication that she shouted or wept at the invasion into her private organ. In fact, when the prosecutor asked what she was doing while Roberto was inserting his penis into her vagina, she failed to give any answer, which strongly indicated that she was in all probability coached on the other questions propounded to her.

Her actions immediately after the incident did not suggest the slightest hint of discomfort on her part. In the normal state of things, a rape victim, particularly a girl of very tender years, would have at the very least exhibited some form of uneasiness or discomfort. It would not have been unusual for Khristine to come running to her mother who was just in the adjoining room with an informal partition. But after her alleged defilement Khristine meekly obeyed Roberto's order to sit down beside him in the *sala*.<sup>[13]</sup> When she was later instructed to put on her clothes and go home she meekly obeyed.<sup>[14]</sup> Not once did she exhibit a grain of discomfiture, soreness or uneasiness. Neither did she offer any resistance, nor declare her abhorrence towards the molester; more so, to the evil done to her. Instead, she reacted in complete submission and supplication to the instructions of her offender, all inconsistent with her claim that she felt pain.

In *People v. Bormeo*,<sup>[15]</sup> the 2-<sup>1</sup>/<sub>2</sub>-year old victim immediately ran to her grandmother crying, with her legs apart and blood trickling down her feet, after having been violated by her grandmother's common-law husband. While we are not unmindful that rape victims may react in different ways,<sup>[16]</sup> given the variance of their background and upbringing and the nature of the crime, we have however said often enough that the conduct of the victim immediately following the alleged assault is of the utmost importance as tending to establish the truth or falsity of the charge.<sup>[17]</sup> Khristine's apparent nonchalance to the evil done to her by accused-appellant seems to suggest indeed that no rape was committed, or at the very least, that she was not harmed after all.

The testimony of Khristine's mother is likewise replete with inconsistencies. According to Evelyn, when she confronted Khristine about her inverted shorts Khristine answered that Roberto inserted his finger insider her vagina and then his penis.<sup>[18]</sup> However, according to her testimony in court, Roberto performed no act other than inserting his penis into her vagina.<sup>[19]</sup>

Evelyn's affidavit taken before the Taguig Police Station confirms this inconsistency. Her initial complaint that Roberto touched her daughter's private parts ("*hinipo daw ni Kuya Ato niya ang pekpek niya*").<sup>[20]</sup> It was only at the end of her statement,