

EN BANC

[G.R. No. 124736, January 22, 1998]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO GALLO Y IGLOSO, ACCUSED-APPELLANT.

DECISION

PER CURIAM:

It is disturbing enough to see that there has been a noticeable increase in the incidents of rape but one is left completely appalled that this still growing number includes cases of the bestial act being perpetrated on the young and innocent and, no longer too infrequently it seems, compounded by the close kinship of the offender and the victim.

In *People vs. Malagar*,^[1] the Court has had occasion to state that a -

"x x x (F)ather is looked up to as the protector and as the guardian of his family, remaining ever wary of even the slightest harm that might befall it. It is difficult to thus imagine that any such man could instead stand as the predator of his own flesh and blood. Yet, we occasionally would find ourselves so regrettably contending with it as a fact."^[2]

In the instant case, the accused, Romeo Gallo y Igloso, was charged, docketed Criminal Case No. 2282, before the Regional Trial Court, Branch 68, of Binangonan, Rizal, with the crime of rape in an information that read:

"That on or sometime the period of May, 1994 in the Municipality of Cardona, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with a 13-year old girl, Marites Gallo y Segovia.

"CONTRARY TO LAW."^[3]

The accused pleaded not guilty; trial ensued in due time.

In a decision, dated 17 April 1996, Romeo Gallo y Igloso was ultimately convicted of rape committed against his own daughter, Marites Gallo y Segovia, only then thirteen years of age. The death penalty having been imposed by the trial court, the records of the case were transmitted to this Court by way of an automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659.

The Solicitor General recommends an affirmance of the decision. He makes the following statement of facts:

"For three years, since age ten, complainant Marites Gallo y Segovia suffered repeated sexual abuses from her father, herein appellant Romeo Gallo y Igloso, the last of which was in their house at Sitio Alacos, Lambac, Cardona, Rizal at around 7:00 in the evening (Exh. 'A') in May 1994 (TSN, Feb. 8, 1995, pp. 4-5; March 13, 1995, p. 2).

"That evening, appellant, taking advantage of the situation that Marites was only with her younger brother who was already asleep, again imposed his bestial desire on his own daughter. Subjecting his daughter to the usual threat that she would be killed if anybody would know his bestiality, appellant (with his pants off) undressed Marites, removed her underpants, kissed her and inserted his penis into her vagina (Annex 'A,' TSN, Feb. 8, 1995, pp. 25-27).

"After appellant's last sexual onslaught, Marites, now thirteen, finally mustered enough courage and narrated her harrowing experience to her aunt Dolores del [Prado]. Accompanied by the latter, Marites reported the incident to the Barangay Captain of Lambac, Cardona, Rizal (TSN, Feb. 8, 1995, pp. 6-7). The incident led to the investigation by the Cardona Police. Marites executed her complaint-affidavit (Exh. 'A,' 'A-1;' Id., pp. 8-10).

"Marites was, thereafter, brought to Camp Crame, Quezon City and was examined by Dr. Cristina B. Freyra who found Marites to be in a non-virgin state. The result of the examination was reduced in writing and covered by Medico-Legal Report No. M-0963-94 (Exh. 'B,' 'B-1;' Id., p. 12; TSN, Sept. 5, 1995, pp. 6-7)."^[4]

The defense pictured the accused as any other ordinary man in the family who had tried hard to provide and care for his wife and children. At certain times, the accused conceded, he would meet and drink with friends. The appellant's brief summed up the testimony of Gallo given before the court below; viz:

"Accused Romeo Gallo testified that he is a native of Masbate and he got married to his wife Elvie Sigovia in 1975. They were married in the Island of Lambac, Cardona, Rizal. Marites, the complaining witness in this case is his eldest child who was born in 1977. Marites was born in Bicol where Elvie, his wife, formerly resided. His daughter Marites stayed with his mother-in-law in Bicol for three (3) years. After three years, Marites already stayed with his family. In 1989, his family, together with Marites, stayed [in] Mindoro up to 1994. During their stay in Mindoro they engaged themselves [in] farming, planting palay, cassava and 'kamoteng bagin.' When asked about the incident that Marites related during her testimony, that she was first molested by the accused, he said that he [did] not know about their accusations. He has no knowledge of any charge against him, for what Marites has said are not true. He treated Marites as a family and he performs his obligation over his family. As far as he remember[s], he spanked his children whenever they commit mistakes as a part of discipline. He and his family alone were in Mindoro, his mother-in-law was not with them.

"In 1994, they moved to Lambac, Cardona, Rizal and there, they

engaged in charcoal making somewhere in the mountainous part of Lambac. With him was his whole family of six (6) children and his wife, and they occupy a nipa hut. When asked of the incident that happened in the mountainous part of Lambac where he was accused of molesting [his] child Marites, he answered that he knows nothing about it. The truth is that one time he beat Marites and may be she was hurt and related the matter to her mother-in-law. His mother-in-law was making 'sulsol' to his daughter to file this case against him so that he and his wife will be separated. His mother-in-law wanted them to be separated because of his poverty. He tried to convince his child Marites to discontinue filing this case but she did not listen. He [has] never molested her daughter Marites Gallo even once.

"On cross examination, he testified that when he married his wife Elvie Gallo, he was then a charcoal maker and before their marriage he [did] not know her mother-in-law. It was only because of the prodding of his mother-in-law that this case was filed by her daughter. Even in 1975 when he got married to his wife Elvie he was still poor and this may be the reason why his mother-in-law wanted him to be separated from his family. At one time he inflicted punishment [on] Marites and this is probably the reason why Marites agreed to file this case against him. On that occasion, he spanked Marites on the buttocks. He admit[ted] to be drinking liquor for a long time during the intervals of weeks x x x with companions in Lambac, Cardona, Rizal. They have stayed in Mindoro from 1984 to 1993, then they moved to Lambac, Cardona, Rizal. After the testimony of this accused, the defense rested its case. (TSN, pp. 3-17, November 27, 1995)"^[5]

Contending that the prosecution has failed to overcome the Constitutional presumption of innocence by an exacting standard of proof beyond reasonable doubt, appellant downgrades the testimony of the complainant as being nothing but incredulous.

The Court has taken meticulous care in reviewing the evidence submitted by both the prosecution and the defense. All possible angles have been considered in the process, for, as it has so recently been said in *People vs. Galera*,^[6] "the Court exercises the greatest circumspection" in its review of death penalty cases since "there can be no stake higher and no penalty more severe x x x than the termination of a human life." Regrettably in this instance, the Court must agree with the trial court in the judgment of conviction.

Cognizant of the fact that the focal, as well as crucial, point in this review is the testimony of the young victim, and because, except for a bare denial, there hardly is any direct rebutting evidence, the Court finds it fitting to hear, here again, Marites, in her own words, on the unfortunate saga. Thus -

Marites Gallo y Segovia, Testifying:

"Q Now, you said that you are almost 14 years of age today?"

"A Yes, sir.

"Q When is your birthday?

"A October 6, sir.

"Q October 6, 1995?

"A Yes, sir.

"Q Now, the accused in this case . . .

What relation, if any, do you have with the accused in this case?

"A He is my father, sir.

"Q And sometime on May, 1994 you were already 13 years old, is that correct?

"A Yes, sir.

"x x x x x x x x x.

"ASST. PROS. SOYANGCO

"Q You said that he is your father, if he is inside the Court room can you identify him?

"A Yes, sir.

"Q Please point to him.

"INTERPRETER

Witness is pointing to a man wearing fuchsia t-shirt, who when his name was asked answered to the name of Romeo Gallo.

"x x x x x x x x x.

"Q You are the complainant in this case, Maritess?

"A Yes, sir.

"Q Now, can you inform us why you are accusing

your father of rape?

"A `Pinagsamantalahan niya po ako,' he raped me, sir.

"x x x x x x x x x.

"Q When you said `pinagsamantalahan' what exactly do you mean?

"A `PINAGSAMANTALAHAN PO NIYA AKO NUON.'

"x x x x x x x x x.

"ASST. PROS. SOYANGCO

And the answer was `Ako po ay pinagsamantalahan niya.' Now to reform that I will adopt the suggestion of the Court that the question should be - `What exactly did your father do to you?'

"COURT

Witness may answer.

"WITNESS

He removed my clothes and he took advantage of me while he was drunk, sir.

"ASST. PROS SOYANGCO

"Q Now, exactly what do you mean by `he took advantage of you while he was drunk,' I mean the accused took advantage of you while he was drunk?

"A `INASAWA NIYA PO AKO.'

"ASST. PROS SOYANGCO

`Inasawa,' Your Honor, means sexual intercourse.

"x x x x x x x x x.

"Q Are you a tagalog speaking person?