# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN MALICSI, ACCUSED-APPELLANT.

Ponente: REYES, JR., J., J.

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**REYES, JR., J., J.:**

Before Us is an appeal from the Decision of the Regional Trial Court (RTC) of Pinamalayan, Oriental Mindoro, Branch 42, dated October 8, 2001, in Criminal Cases Nos. P-5765, P-5766, P-5767, and P-5768 (Rollo, pp. 20-24; 74-78; Records, Vol. IV, pp. 63-67), entitled "People of the Philippines, Plaintiff, vs. Edwin Malicsi, Accused," the dispositive portion of which is as follows:

> "ACCORDINGLY, judgment is hereby rendered finding accused Edwin Malicsi guilty beyond reasonable doubt of the four (4) counts of qualified rape, which is defined and penalized under Article 335 of the Revised Penal Code as amended by R.A. 7659, by death. Consequently, accused is hereby sentenced to suffer death for each count of rape. As civil indemnity, the accused is ordered to pay P300,000.00 (P75,000.00 in each case) and as moral damages, to pay P200,000.00 (P50,000.00 in each case) to the private complainant.
>
> Let the records of this case be forwarded to the Honorable Supreme Court for automatic review and judgment pursuant to par. (d) Section 3, in relation to Section 10 of the Revised Rules of Criminal Procedure.
>
> SO ORDERED." (Rollo, p. 24; 78; Records, Vol. IV, p. 67)

The facts are as follows:

Accused-appellant stands charged with the crime of rape under Article 335 of the Revised Penal Code as amended by Republic Act (R.A.) No. 7659, in four (4) separate Informations, to wit:

> Criminal Case No. P-5765
>
> That on or about the 4th day of April, 1998, at barangay Pagala-gala, municipality of Pinamalayan, province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an uncle of the Offended Party, with lewd and unchaste design, by means of force, threat and intimidation did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with the undersigned Offended Party, a 15-year-old girl, against her will and without here consent.
>
> CONTRARY TO Article 335 in Relation to R.A. 7659." (Rollo, pp. 7-8; Records, Vol. I, pp. 1-2)
>
> Criminal Case No. P-5766
>
> That on or about the month of March 1998, at barangay Pagala-gala, municipality of Pinamalayan, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an uncle of the Offended Party, with lewd and unchaste design and by means of force and intimidation did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with the undersigned Offended Party, a 15-year-old girl, against her will and without her consent.
>
> CONTRARY TO Article 335 in Relation to R.A. 7659. (Rollo, pp. 9-10; Records, Vol. II, pp. 1-2)

> Criminal Case No. P-5767
>
> That on or about the month of December, 1996, at around 7:00 o'clock in the evening, at barangay Pagala-gala, municipality of Pinamalayan, province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an uncle of the Offended Party, with lewd and unchaste design and by means of force and intimidation did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with the undersigned Offended Party, who at that time is only a 13-year-old girl, against her will and without her consent.
>
> CONTRARY TO Article 335 in Relation to R.A. 7659. (Rollo, pp. 11-12; Records, Vol. III, pp. 1-2)
>
> Criminal Case No. P-5768
>
> That on or about the 1st day of April 1998, at barangay Pagala-gala, municipality of Pinamalayan, province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an uncle of the Offended Party, with lewd and unchaste design, by means of force, threat and intimidation did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with the undersigned Offended Party, a 15-year-old girl, against her will and without her consent.
>
> CONTRARY TO Article 335 in Relation to R.A. 7659 (Rollo, pp. 13-14; Records, Vol. IV, pp. 1-2)

Upon arraignment, accused-appellant pleaded not guilty to the crimes charged. Thereafter, trial ensued.

The prosecution presented Dr. Marlon Dela Rosa, the examining physician of the offended party, Maricel Del Rosario, as its first witness. Dr. Dela Rosa testified that he examined Maricel and found that she sustained "nulliparous introitus with old hymenal laceration(s) at 1 o'clock, 7 o'clock, and 5 o'clock position(s)" and that by hymenal lacerations, he meant that Maricel lost her virginity (TSN, September 8, 1998, p. 3). He also stated that he executed a medical certificate (Records, Vol IV, p. 6) when he examined Maricel on April 24, 1998. Upon cross-examination, Dr. Dela Rosa testified that the lacerations Maricel sustained could not have been caused by masturbation, but it is possible for the hymen to have such lacerations when hard objects are inserted thereto (TSN, September 8, 1998, p. 5).

The prosecution next presented the testimony of Maricel's mother, Elenita Del Rosario, who testified that she knows accused-appellant because the latter's wife is the sister of her husband; that their house is only about twenty (20) meters away from the house of accused-appellant; that her nephew, Ronilo Soriano, reported to her sometime in April 1998 that Maricel was raped by accused-appellant (TSN, October 5, 1998, p. 3); that she asked Maricel if she was raped by accused-appellant and for how many times; that Maricel told her that she was indeed raped by accused-appellant five (5) times in different occasions; that Maricel informed her of the months when she was raped but not the exact times thereof; that she was informed by Maricel that she was first raped by accused-appellant in December 1996 at about 7 o'clock in the evening near the creek; that Maricel did not tell her the exact dates for the second and third rape incidents (TSN, October 5, 1998, p. 4); that Maricel further told her that she was raped by accused-appellant on two (2) more occasions in April 1998, particularly on April 1 and 4, respectively; that they reported the matter to the local police authorities; that accused-appellant was apprehended and that a confrontation at the police station ensued between Maricel and accused-appellant; that during the confrontation, Maricel told accused-appellant "ako man din tiyo ay ginahasa mo;" that she executed an affidavit (Records, Vol. IV, p. 5) at the police station (TSN, October 5, 1998, p. 5); that the wife of accused-appellant approached her to settle the case for ten thousand (P10,000.00) Pesos and that the said offer took place before a certain Fiscal Enriquez; and that she and her husband refused the offer because their child, Maricel, was dishonored (TSN, October 5, 1998, p. 7).

On cross-examination, witness Elenita Del Rosario stated that they reported the matter to the police approximately


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about two (2) years after the first incident of rape because she only learned of the matter after the "sumbong" made to her by her nephew (TSN, October 5, 1998, p. 9); and that Maricel, during the said 2-year period, acted as if nothing happened to her (TSN, October 5, 1998, p. 10). On re-direct, she testified that Maricel did not reveal the matter to her because she was threatened to be killed by accused-appellant, and since she became aware of the incidents only after her nephew told her of the same, that was the only time she went to the police (TSN, October 5, 1998, p. 11).

Finally, the prosecution presented Maricel as its last witness. Maricel testified that she knows accused-appellant because the latter is her uncle, her father being the brother of her Tiya Ana who is the wife of accused-appellant; that she was raped by accused-appellant five (5) times, and the first incident happened sometime in December 1996 around 7 o'clock in the evening at the creek near the house of a certain Aling Puring (TSN, December 1, 1998, p. 4); that on the day of such incident, she was asked by her father to buy wine and as she was returning home, accused-appellant laid on top of her, held both of her hands, turned off the flashlight she was bringing, and embraced her; that she was ordered by accused-appellant to stoop down and the latter removed her shorts and panty (TSN, December 1, 1998, p. 5); that she obeyed accused-appellant because she was threatened to be killed by a knife; that while in that position, accused-appellant inserted his penis into her vagina and while accused-appellant did that, she felt pain in her sex organ (TSN, December 1, 1998, p. 6); that she tried to free herself from accused-appellant and when she was able to do so, accused-appellant warned her not to say anything to her parents (TSN, December 1, 1998, p. 7).

Maricel further testified that the second incident happened sometime in March 1998 at the bamboo grove near their house while she was looking for a fallen coconut; that accused-appellant ordered her to lie down (TSN, December 1, 1998, p. 8); that accused-appellant removed her panty and inserted his penis into her vagina; that she tried to free herself from accused-appellant but could not remember for how long she resisted the sexual assault (TSN, December 1, 1998, p. 9); that she did not report the same to her parents because she was threatened by accused-appellant (TSN, December 1, 1998, p. 10); and that the third incident happened also in March 1998 near the bamboo grove when accused-appellant ordered her to lie down on the ground and inserted his penis into her vagina (TSN, December 1, 1998, p. 11).

She likewise stated that the fourth incident took place on April 1, 1998 at the banana grove of a certain Mang Duko which is far from their house; that she went there because she was ordered by accused-appellant to go, and she was afraid of what he will do to her if she does not obey; that upon reaching the banana grove, accused-appellant asked her to lie down and the latter again inserted his penis into her vagina (TSN, December 1, 1998, p. 12); that the fifth incident took place on April 4, 1998 at about 3 o'clock in the afternoon while she was gathering firewood; that accused-appellant was following her and was able to catch up with her (TSN, December 1, 1998, p. 13); that she was ordered to lie down and accused-appellant once again inserted his penis into her sexual organ; that her Kuya Ronilo Soriano saw them and reported the matter to her mother (TSN, December 1, 1998, p. 14); and that she confirmed to her mother that she was raped by accused-appellant, and thereafter, she was brought to the police headquarters where she executed a sworn statement (Records, Vol. IV, pp. 3-4) as to the above incidents of rape (TSN, December 1, 1998, p. 15).

On cross-examination, Maricel stated that she could not remember the exact date of the first incident but she knows the same to be done in December 1996 at about 7 o'clock in the evening (TSN, December 1, 1998, p. 22); that there were only about five (5) persons at the store where she bought the wine for her father, and that accused-appellant was not one of them (TSN, December 1, 1998, p. 24); that on her way home, accused-appellant approached her and placed her on his lap; that accused-appellant asked her to undress but she did not accede thereto (TSN, December 1, 1998, p. 25); that she obeyed when accused-appellant ordered her to stoop down

(TSN, December 1, 1998, p. 26); that it was the first time that she had sexual intercourse and she did not feel any sense of satisfaction (TSN, December 1, 1998, p. 27); that upon arriving home, his father asked her why she was late but she did not tell him what happened (TSN, December 1, 1998, p. 28).

Still on cross-examination, Maricel testified that the next incident was about two (2) years after the first incident of rape, and this second incident took place in March 1998 around 7 o'clock in the evening near the bamboo grove (TSN, December 1, 1998, p. 29); that after accused-appellant grabbed one (1) fallen coconut from her, he caught her and embraced her (TSN, December 1, 1998, p. 31) but she did not respond to that embrace; that she could not remember the time she arrived home although she remembered the time that accused-appellant raped her (TSN, December 1, 1998, p. 32); that accused-appellant told her to go to the banana grove of a certain Mang Duko on April 1, 1998 and she went there even though she knew that accused-appellant will be there (TSN, December 1, 1998, p. 34); that she went to the place because she was afraid of accused-appellant (TSN, December 1, 1998, p. 35); and that when the matter was reported to the police authorities, the police officer who typewrote her affidavit was occasionally asking questions to her mother who was with her (TSN, December 1, 1998, p. 37).

On re-direct, Maricel stated that on the fourth occasion, she went to the place where accused-appellant told her to go to because she was afraid that if she does not go there, accused-appellant will kill her; that she was only thirteen (13) years old when she was first raped by accused-appellant on December 1996, her birthday being on January 9, 1983 (TSN, December 1, 1998, p. 40); that during the first incident, she did not shout nor make an outcry because accused-appellant told her not to or else he will kill her (TSN, December 1, 1998, p. 41); that accused-appellant poked a kitchen knife on her breast (TSN, December 1, 1998, p. 42); that she went to the bamboo grove as ordered by accused-appellant because she was afraid of him who always approaches her with a kitchen knife; and that she did not inform her parents that she was molested by accused-appellant because he threatened to kill her (TSN, December 1, 1998, p. 43).

As for the defense, the sole testimony of accused-appellant was presented. He testified that Maricel is the niece of his wife, Ana Malicsi; that Maricel's father is the brother of his wife (TSN, November 15, 1999, p. 3); that he denies the accusations of rape because those sexual incidents were agreed upon between himself and Maricel as they were sweethearts; that prior to the first incident in December 1996, Maricel came to their house about thrice a week when his wife was not at home (TSN, November 15, 1999, p. 4); that sometime in December 1996, he came home from Manila around 3 o'clock in the afternoon and asked his wife to go to the market; that he was very sleepy and while sleeping inside his room, he sensed that someone entered his house(TSN, November 15, 1999, p. 5); that upon seeing that it was Maricel, he stood up, held her hands and kissed her; that they entered his room and as he embraced and kissed Maricel, the latter embraced and kissed him back; that he told Maricel to remove her panty (TSN, November 15, 1999, p. 6) and he inserted his penis into her vagina; that Maricel did not have any violent reaction but merely closed her eyes as he inserted his sex organ into hers; that Maricel was lying face upward in his bed (TSN, November 15, 1999, p. 7); that after their sexual intercourse, Maricel went home (TSN, November 15, 1999, p. 8).

Accused-appellant further testified that there was another incident in 1998 in the banana grove near Maricel's backyard; that he was urinating at the creek when he called Maricel by whistling at her and the latter came near him (TSN, November 15, 1999, p. 8); that he embraced Maricel and she embraced him back; that he told her to remove her shorts and panty and had her lie down on the ground(TSN, November 15, 1999, p. 9); that he placed himself on top of her and inserted his penis into her sexual organ; that while doing so, Maricel was embracing him; that after their sexual intercourse, Maricel went home; that a third incident happened on April 4, 1998 in the banana plantation of Mamang Duko about two hundred (200) meters away from the house of Maricel; that Maricel went there because it was their agreement to meet there; that he embraced Maricel when she approached

him (TSN, November 15, 1999, p. 10); that he asked Maricel to take off her shorts and panty, and thereafter lied on top of her and inserted his penis into her vagina; that while doing so, Maricel was merely looking at him; that there was no more sexual incident between himself and Maricel after that (TSN, November 15, 1999, p. 11); and that after having learned of the rape charges against him, he did not anymore have the opportunity to talk to Maricel (TSN, November 15, 1999, p. 12).

During his cross-examination, accused-appellant explicitly admitted that he had sexual intercourse with Maricel thrice; that Maricel calls him Tiyo (TSN, November 15, 1999, p. 13); that they had sexual intercourse because they were lovers (TSN, November 15, 1999, pp. 15-16); and that he does not know why Maricel accused him of raping her (TSN, November 15, 1999, p. 16-17).

After trial, the trial court rendered the assailed Decision on October 8, 2001 (Rollo, pp. 20-24; 74-78; Records, Vol. IV, pp. 64-67) finding accused-appellant guilty beyond reasonable doubt of the four (4) counts of rape charged against him, and sentencing him to suffer the penalty of death for each count. The records of the case were then forwarded to the Supreme Court for automatic review. However, in view of the pronouncement of the Supreme Court in People of the Philippines v. Mateo (433 SCRA 640 [2004]), the instant case was transferred to Us for our appropriate action and disposition (Rollo, p. 109).

Hence, the instant appeal raising before Us the following assignment of errors:

> I
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> The trial court gravely erred in giving full faith and credence to the incredible testimony of the private complainant.
>
> II
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> The trial court gravely erred in convicting the accused-appellant of the crime charged despite the fact that his guilt was not proven beyond reasonable doubt.
>
> III
> Assuming arguendo that the accused-appellant is guilty, the trial court gravely erred in imposing the supreme penalty of death without considering the attendant circumstances of the case (Rollo, p. 55).

In support of the first and second issues, accused-appellant argues that the offended party did not describe the manner by which she struggled against him and/or resisted his sexual advances, and absent this tenacious resistance required by law, it cannot be gainsaid that the sexual intercourse was committed against her will and consent. To further bolster this argument, accused-appellant postulates that it was not sufficiently proven during trial that there was actual or imminent danger or threat to offended party's life. He also points out to the offended party's failure to shout for help during the rape incidents, the alleged relationship between himself and the offended party, and the delay in the reporting of the rape incidents to the authorities as indicia of the incredibility of the offended party's testimony.

We are not swayed by such arguments.

It has been held that resistance is not an element of rape and the absence thereof is not tantamount to consent; thus, the failure to offer tenacious resistance does not make the submission by the offended party to the criminal acts of an accused voluntary (People v. Capareda, 429 SCRA 301 [2004]; People v. Bautista, 430 SCRA 469 [2004]). Physical resistance need not be established when intimidation is exercised upon the victim and the latter submits against her will to the rapist's embrace because of fear for her life and personal safety (People v. Alberio, 433 SCRA 469 [2004]; People v. Llanto, 395 SCRA 473 [2003]). Corollarily, it has been consistently ruled by the


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Supreme Court that all that is necessary is that force and intimidation were employed by the accused against the victim which enabled him to commit the crime (People v. Lou, 419 SCRA 345 [2004]; People v. Blancaflor, 421 SCRA 354 [2004]; People v. Mantis, 433 SCRA 236 [2004]).

Elucidating on the requirement of the attendance of force or intimidation, the Supreme Court stated that it is not necessary that force or intimidation employed be so great or be of such character that it cannot be resisted (People v. Oga, 431 SCRA 354 [2004]). Force and intimidation necessary in rape is naturally a relative term, and fear, in lieu of force or violence is subjective and is addressed to the mind of the victim, and its presence cannot be tested by any hard-and-fast rule but must instead be viewed in the light of the perception and judgment of the victim at the time of the crime (People v. Bascugin, 429 SCRA 140 [2004]; People v. Capareda, 429 SCRA 301 [2004]; People v. Espinosa, 432 SCRA 86 [2004]). What is important is that the force or intimidation is of such character as to create real apprehension of dangerous consequence or serious bodily harm that would overpower the mind of the victim and prevent her from offering resistance (People v. Oga, 431 SCRA 354 [2004]).

In the instant case, Maricel was a minor at the time of the commission of the crime and she claims her aggressor to be a family member. During accused-appellant's cross-examination, he admitted that Maricel respectfully calls him "tiyo" or uncle (TSN, November 15, 1999, p. 13). We believe that their family relationship makes Maricel the subject of accused-appellant's moral ascendancy.

More than that, it is not only the moral ascendancy of accused-appellant over Maricel that is existing in the instant case. It was clearly established during the trial that Maricel exerted efforts to free herself from accused-appellant (TSN, December 1, 1998, p. 7). It was also sufficiently established that Maricel acceded to the sexual urges of accused-appellant because she was threatened to be killed by a kitchen knife (TSN, December 1, 1998, p.6) and that accused-appellant actually poked a kitchen knife on her breast during the incident (TSN, December 1, 1998, p. 42). Maricel likewise testified that she was afraid to disobey accused-appellant because the latter always approaches her with a kitchen knife (TSN, December 1, 1998, p. 43). It is because of Maricel's fear of what accused-appellant will do to her that made her accede to the sexual urges of the latter (TSN, December 1, 1998, p. 12).

To Our mind, the above circumstances belie accused-appellant's claim that Maricel did not offer the tenacious resistance required by law and that there was no actual nor imminent danger to Maricel's life at the time of the commission of the crime. As has been held by the Supreme Court, threatening the victim with bodily injury while holding a knife constitutes intimidation sufficient to bring a woman to submission to the lustful desires of her molester against her will and consent (People v. Gutierrez, 403 SCRA 178 [2003]). Thus, We disagree with accused-appellant's claim that the several instances of sexual congress between him and Maricel were tainted with voluntariness.

Accused-appellant further argues that if indeed Maricel was being raped, she should have at least made an outcry during the incident. He asserts that Maricel's failure to do so only shows that the sexual congress that transpired between them was a consented one. We disagree.

It is a well-settled rule that different people react differently to a given situation or type of situation and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience (People v. Gonzales, 433 SCRA 102 [2004]). Rape, more so if committed by a family member, is indeed a startling occurrence and the victim is not expected to act reasonably nor conformably to the usual expectations of everyone as each person may react differently to the same situation (People v. Dulay, 381 SCRA 346 [2002]; People v. Baylen, 381 SCRA 395 [2002]).

Here, as stated above, accused-appellant constantly threatened Maricel that he will kill her, and he poked a


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kitchen knife on Maricel's breast during the incidents. In view of her fear for her life and safety, it is thus understandable for Maricel not to have made an outcry while she was being molested by accused-appellant.

We likewise do not find accused-appellant's defense based on the "sweetheart theory" tenable. We do not find credence to accused-appellant's claim that he had sexual intercourse with Maricel because they were lovers (TSN, November 15, 1999, pp. 15-16).

A "sweetheart" defense to be credible, should be sustained by some documentary or other evidence of relationship (People v. Gabelinio, 426 SCRA 608 [2004]). It is effectively an admission of carnal knowledge of the victim and consequently, it places upon the accused the burden of proving the supposed relationship by clearly convincing evidence such as mementos, love letters, notes, pictures and the like (People v. Bautista, 430 SCRA 469 [2004]; People v. Mantis, 433 SCRA 236 [2004]; People v. Manallo, 400 SCRA 129 [2004]; People v. Antonio, 430 SCRA 619 [2004]).

In the instant case, accused-appellant proffered no evidence in support of his "sweetheart" defense other than his bare assertions thereof. Such claim obviously does not deserve consideration. Moreover, even assuming arguendo that he had a relationship with Maricel, it is not sufficient to make their sexual intercourse voluntary because even a sweetheart or a lover can be forced to engage in a sexual act against her will and consent (People v. Gabelinio, 426 SCRA 608 [2004]; People v. Bautista, 430 SCRA 469 [2004]).

Accused-appellant likewise challenges the lapse of almost two (2) years since the first incident of rape before the reports were made to the local police authorities. He argues that this delay seriously impairs Maricel's sincerity and credibility. We are not persuaded.

Long silence and delay in reporting the crime of rape has not always been construed as an indication of a false accusation (People v. Ballester, 420 SCRA 379 [2004]). The silence of a victim of rape or her failure to disclose her misfortune to the authorities without loss of material time does not prove that her charge is baseless or fabricated (People v. Glodo, 433 SCRA 535 [2004]).

In the present case, it is not controverted that the reports were made to the police authorities only after two (2) years since the first incident of rape because it was only after the lapse of such number of years that the matter came to the knowledge of Maricel's parents. During the trial, Maricel's mother stated that they reported the matter to the police approximately about two (2) years after the first incident of rape because she only learned of the matter after the "sumbong" made to her by her nephew (TSN, October 5, 1998, p. 9); and that Maricel, during the said 2-year period, acted as if nothing happened to her (TSN, October 5, 1998, p. 10).

The fact that Maricel did not disclose that she was molested by accused-appellant for two (2) years was not left unexplained. Maricel has constantly testified during trial that accused-appellant warned her not to say anything to her parents (TSN, December 1, 1998, p. 7), that she did not report the same to her parents because she was threatened by accused-appellant (TSN, December 1, 1998, p. 10), and that accused-appellant threatened to kill her if she would tell (TSN, December 1, 1998, p. 43).

A rape victim cannot be expected to summon the courage to report a sexual assault committed against her person, where the act was accompanied by a death threat (People v. Mantis, 433 SCRA 236 [2004]). It is not even uncommon for young girls to conceal for some time the assault against their virtue because of the threats on their lives (People v. Manalo, 396 SCRA 573 [2003]). Thus, upon a consideration of the above circumstances, We believe that the delay in reporting the rape incidents to the police was not indicative that Maricel merely fabricated the charges against accused-appellant.

In view of the foregoing discussion, We disagree with accused-appellant that the trial court erred in convicting

him of the crimes charged.

We are not unaware that as a result of the guiding principles laid down by the Supreme Court in review of rape cases (see People v. Lou, 419 SCRA 345 [2004]; People v. Obrique, 420 SCRA 304 [2004]; People v. Lumibao, 421 SCRA 65 [2004]; People v. Valdez, 421 SCRA 376 [2004]), credibility becomes the single most important issue therein (People v. Andales, 422 SCRA 253 [2004]). And the assessment of the credibility of witnesses and their testimonies is best undertaken by the trial court (People v. Bulan, 459 SCRA 550 [2005]) because it has the excellent opportunity of obtaining firsthand impressions of the witnesses' demeanor and conduct, an opportunity not equally available to appellate courts (People v. Caraang, 418 SCRA 321 [2003]).

Thus, the findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect by an appellate court, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood, or misappreciated and which, if properly considered will alter the results of the case (People v. Suarez, 456 SCRA 333 [2005]; Amplayo v. People, 457 SCRA 282 [2005]).

After a careful evaluation of the case before Us, We agree with the trial court that the prosecution's version of the story deserves more credence.

Applicable to instant controversy is the ruling of the Supreme Court that when a woman, more so if she is a minor, says that she has been raped, she says, in effect, all that is necessary to prove that rape was committed (People v. Ancheta, 419 SCRA 307 [2004]; People v. Antivola, 421 SCRA 587 [2004]). In a plethora of cases, the Supreme Court has likewise held that child victims, like young and immature girls between the ages of 12 to 16, would not concoct a story of defloration, allow an examination of their private parts and subject themselves to public trial or ridicule if they were not, in truth, been victims of rape and impelled to seek justice for the wrong done to them (People v. Dimacuha, 422 SCRA 688 [2004]; People v. Pacheco, 424 SCRA 164 [2004]; People v. Mirante, Sr., 395 SCRA 224 [2003]).

Here, We do not find reasons to doubt Maricel's credibility on the face of accused-appellant's bare denials, more especially where accused-appellant has not adduced any evidence that Maricel or her family has ill motives to testify against him. Also noteworthy is the fact that Maricel and accused-appellant are family relatives and it is highly inconceivable for a minor like Maricel to fabricate a rape charge against her "uncle." Even accused-appellant stated during trial that he does not know of any reason why Maricel would impute the crime of rape against him (TSN, November 15, 1999, p. 16-17). This logically convinces Us that no motive propelled Maricel or her family to charge accused-appellant of such a serious offense as rape. Moreover, no member of a rape victim's family would dare encourage the victim to publicly expose the dishonor to the family unless the crime was in fact committed, more so in a case where the victim and the offender belong to the same family (People v. Flores, 400 SCRA 677 [2003]).

That We give more credence to testimony of the offended party does not mean that We turned a blind eye on the Constitutional presumption of innocence that herein accused-appellant enjoys (Section 14[2], Article III of the 1987 Constitution). We constantly adhere to the principle that every circumstance favoring the innocence of the accused must be taken into account, that the proof against him must survive the test of reason, and only when the conscience is satisfied that the crime has been committed by the person on the trial should the sentence be one of conviction (People v. Lati, 184 SCRA 336 [1990]; People v. Dismuke, 234 SCRA 51 [1994]).

However, upon a careful scrutiny of the records before Us, We believe that indeed, the prosecution has disposed of its burden of overturning the presumption of innocence by proof beyond reasonable doubt.

At this juncture, We shall proceed to the last argument propounded by accused-appellant. He contends that the


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trial court erred in sentencing him to suffer the penalty of death on four (4) counts of qualified rape. According to accused-appellant, he should only be convicted of simple rape.

On this point, We agree with accused-appellant.

Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act (R.A.) No. 7659 provides that minority and relationship qualify the crime of rape in which case, the imposition of death penalty is warranted. In this connection, Sections 8 and 9, Rule 110 of the 2000 Rules of Criminal Procedure require both qualifying and aggravating circumstances to be alleged with specifity in the information. While the rape incidents herein complained of took place in 1998, the same provisions should nevertheless be given retroactive effect as they are favorable to accused-appellant (People v. Limio, 429 SCRA 597 [2004]; People v. Sumaragao, 422 SCRA 324 [2004]; People v. Antonio, 399 SCRA 585 [2003]).

In a line of cases, the Supreme Court has enunciated the rule that the minority of the victim and the offender's relationship to the victim, which constitute only one special qualifying circumstance, must be alleged in the Information and proved with certainty (People v. Viajedor, 401 SCRA 312 [2003]; People v. Servano, 406 SCRA 508 [2003]; People v. Layugan, 428 SCRA 98 [2004]; People v. Escultor, 429 SCRA 651 [2004]). It is necessary to spell out in an Information for rape that the accused is a relative within the third degree of consanguinity or affinity for the imposition of capital punishment on the offender otherwise, such circumstances cannot be appreciated to qualify the offense (People v. Ibarrientos, 432 SCRA 424 [2004]). The bare testimony of the complainant and the admission of the accused during the trial as to their relationship do not suffice for an accused cannot be deprived of his right to be informed of the nature of the charge against him (People v. Luna, 395 SCRA 647 [2003]).

In the instant case, the Informations filed against accused-appellant merely stated that he is the "uncle" of Maricel (Rollo, pp. 7-14; Records, Vol. I, pp. 1-2; Records, Vol. II, pp. 1-2; Records, Vol. III, pp. 1-2; Records, Vol. IV, pp. 1-2). This is not the sufficient allegation required by the law. If the offender is merely a relative, not a parent, ascendant, step-parent or guardian or common-law spouse of the mother of the victim, the information must allege that he is a relative by consanguinity or affinity within the third civil degree (People v. Blancaflor, 421 SCRA 354 [2004]). It is not enough for the information to merely allege that the accused-appellant is the "uncle" of the victim even if the prosecution is able to prove the same during trial (People v. Villarama, 397 SCRA 306 [2003]; People v. Ramos, 394 SCRA 452 [2002]).

The following pronouncement of the Supreme Court in People v. Pacheco (424 SCRA 164 [2004]) is indeed instructive:

> "The information alleges that 'herein complainant and offended party [is] the sister-in-law of the accused and therefore a relative by affinity within the third civil degree.' Said circumstance presupposes the existence of a legitimate relationship, such that the appellant should be shown as lawfully married to the private complainant's sister, Justina. As held in the case of People v. Berana, to effectively prosecute for the crime of rape committed by a relative by a affinity within the third civil degree, it must be established that (1) appellant is legally married to private complainant's sister, and (2) private complainant and appellant's wife are full or half blood siblings.
>
> Considering that said circumstance of relationship by affinity qualifies the offense of rape, such that it becomes punishable by death, it is compulsory that a more stringent standard of proof must be met by the prosecution. Mere testimony of witnesses is not enough to dispel doubts regarding the in-law relationship of appellant and the victim. Where the life of the appellant hangs in the balance, a more exacting proof must be adduced.
>
> In our view, the failure of the prosecution to submit an authentic document, such as the original contract of

> marriage or the certified true copy thereof, between appellant and Justina Cantos leaves the alleged in-law relationship between appellant and the victim inadequately proved. For this reason, we are not prepared to impose on him the extreme penalty of death. The proper penalty should only be reclusion perpetua." (424 SCRA 164; 177)

In the case at bar, the separate Informations do not specifically allege that accused-appellant is a relative of the offended party within the third civil degree of affinity. The prosecution likewise failed to establish during trial said relationship by affinity. Accused-appellant is claimed to be the "uncle" of Maricel because he is the husband of Maricel's paternal aunt. The relationship between Maricel's father and her aunt, the wife of accused-appellant was not sufficiently established. Furthermore, the prosecution failed to prove convincingly that Maricel's aunt was legally married to herein accused-appellant. Thus, following the above-quoted case of Pacheco, for failure of the prosecution to establish the relationship between the offended party and the accused, the penalty of death is not warranted.

While herein accused-appellant himself admitted to be the uncle of Maricel, and claimed to be the husband of Maricel's aunt, such admission is nevertheless sufficient to convict him of qualified rape. We reiterate that the bare testimony of the complainant and the admission of the accused during the trial as to their relationship do not suffice because an accused cannot be condemned to suffer the supreme penalty of death on the basis of stipulations or his own admissions (People v. Ancheta, 419 SCRA 307 [2004]).

Finally, We nevertheless cannot impose on accused-appellant the penalty of death in view of the passage of Republic Act (R.A.) No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines." R.A. 9346 prohibits the imposition of death penalty and under Section 2 thereof, in lieu of the capital punishment, the penalty of reclusion perpetua is warranted. This new law may well be given retroactive application to accused-appellant inasmuch as it is favorable to him.

All told, as We affirm the appealed decision of the trial court convicting accused-appellant for the four (4) counts of rape, We, however, modify the penalty imposed to reclusion perpetua.

WHEREFORE, the decision of the Regional Trial Court (RTC) of Pinamalayan, Oriental Mindoro, Branch 42, dated October 8, 2001, in Criminal Cases Nos. P-5765, P-5766, P-5767, and P-5768 is AFFIRMED with the MODIFICATION that accused-appellant Edwin Malicsi is sentenced to suffer the penalty of reclusion perpetua.

**SO ORDERED.**

Reyes, (Chairman) and Lanzanas, JJ., concur.


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