

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR DERPO, ACCUSED-APPELLANT.

Ponente: BERSAMIN, L.P., J.

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BERSAMIN, L.P., J.:

The accused appeals his convictions for statutory rape and for attempted rape handed down by the Regional Trial Court (RTC), Branch 55, in Irosin, Sorsogon.

First, the facts.

The accused was charged with 2 counts of statutory rape under separate informations filed in the RTC, as follows:

Criminal Case No. 1417[1]

That on January 2, 2000 at more or less 7:00 o'clock in the evening, at Barangay Gulang-Gulang, Municipality of Irosin, Province of Sorsogon, and within the jurisdiction of this Honorable Court, the above-named accused, with force and intimidation, and with abuse of his moral ascendancy, did then and there willfully, unlawfully and feloniously with lewd designs, had carnal knowledge of JULIE ANN JUDIN Y FANSIPANI, his 7 year old niece, and a virgin of good reputation against her will and without her valid consent, to her damage and prejudice.

The offense is aggravated by relationship, the accused being the uncle of the said victim.

Criminal Case No 1418[2]

That on January 2, 2000 at more or less 7:00 o'clock in the evening, at Barangay Gulang-Gulang, Municipality of Irosin, Province of Sorsogon, and within the jurisdiction of this Honorable Court, the above-named accused, with force and intimidation, and with abuse of his moral ascendancy, did then and there, willfully, unlawfully and feloniously with lewd designs, had carnal knowledge of IVY JUDIN Y FANSIPANI, his 10 year old niece, and a virgin of good reputation, against her will and without her valid consent, to her damage and prejudice.

The offense is aggravated by relationship, the accused being the uncle of the said victim.

Upon his arraignment on June 14, 2000, Salvador Derpo pleaded not guilty to each information.[3]

EVIDENCE OF THE PROSECUTION

In the joint trial of the cases, 4 witnesses testified for the State namely: offended parties Julie Ann Judin and Ivy Judin; their father Antonio Judin; and Dr. Runnel John Rebutillo, the rural health physician who examined the offended parties immediately after the sexual assault. Their story follows.

On January 2, 2000, at between 6 and 7 o'clock pm, Julie Ann Judin, then 7 years old, and her sister, then 10-year old Ivy Judin, obtained permission of their father, Antonio Judin, to watch television in a neighbor's house.[4] As they were on their way, Derpo, allegedly their uncle, invited them to enter his house so that he would give each P50.00. Enticed by the offer, they entered his house, but Derpo, instead of giving the money, locked the door and

began undressing 7-year old Julie Ann, whom he laid down on the floor and then placed himself on top of her (dinapaaan niya), kissing her on the face.[5] The act was witnessed by Ivy who later testified that Derpo failed to insert his penis into Julie Ann's sexual organ. Ivy recalled him saying to Julie Ann that "if she is already grown up that is the time for him to do it." [6] He shifted his attention to Ivy, undressing her and making her lie on the floor. He then mounted Ivy and consummated the sexual act on her. Ivy felt extreme pain in her genitalia when he inserted his penis in her vagina. Ivy was helpless to resist but she cried out loudly as he violated her. She noticed afterwards that her sexual organ was bleeding and that she experienced pain there.[7] To aggravate Ivy's ordeal, he ordered Julie Ann to watch and look at what he was doing to her sister.[8] Although frightened, Julie Ann could not run away because the house was locked by the accused.[9] After the rape, he threatened to kill them if they told anyone about what he had done.[10] At about then, the girls heard their father's whistle signaling them to go home. The accused allowed the girls to get out of his house.[11]

Antonio Judin narrated that he went looking for his daughters at about 7:00 pm on January 2, 2000 to summon them to supper; that his daughters had earlier asked his permission for them to watch a TV show in a neighbor's house; that he failed to locate them;[12] that exhausted by his search, he stood by a bridge near the house of the Barangay Captain and whistled;[13] that his daughters probably heard his whistle because he then saw them come out of the house of Derpo; that he became immediately apprehensive, prompting him to ask his children what they were doing in Derpo's house; that his daughter did not answer his query immediately; that he held them by their shoulder and briskly walked them home;[14] that as soon as they reached their house, he scolded them and demanded to know why they were in Derpo's house; and that because of his prodding, his daughters then told him about what Derpo had done to them.

Antonio further narrated that he was overcome with rage and hatred for Derpo that he slapped his daughters;[15] and that as soon as he regained his composure, he rushed his daughters to the Irosin District Hospital for physical examination.[16]

Dr. Runnel John Rebutillo, the resident physician at the Irosin District Hospital, examined the girls at around 10:00 pm upon their arrival. He certified to the following findings on Ivy Judin, viz:[17]

PERTINENT PHYSICAL EXAMINATION: No

hematoma, no laceration, no abrasion

all over the body

EXTERNAL EXAMINATION (sic):

= (+) open orifice ((vaginal)

= (+) probably healed laceration on 2 o'clock and 11 o'clock hymen

= (+) new abrasions on outer part of the

hymen

= (+) yellowish non-foul smelling secretion on vaginal canal

INTERNAL EXAMINATION:

= pinkish vaginal mucosa

= probably not intact hymen admits finger with ease

MICROSCOPIC EXAMINATION:

=(-) findings for spermatozoa or pus cells

Dr. Rebutillo declared that Ivy's vaginal canal was already open, possibly caused either by trauma to the area which might be due to horseback riding or bicycle riding although it might also be caused by penetration of any object. He found fresh abrasions on the outer part of Ivy's hymen that was possibly due to the forceful entry of a

penis, or any hard object, including a finger, or sexual abuse. He said that an erect penis could cause the abrasions because the hymen was elastic; and that the erect penis could scratch the outer surface of the hymen, creating friction that caused the abrasions.[18]

Dr. Rebastillo's examination of Julie Ann yielded the following findings, to wit:

Pertinent Physical Examination:

- = (-) hematoma
- = (-) abrasions
- = (-) lacerations all over the body

External Examination:

- = (+) open vaginal orifice
- = intact hymen
- = (-) bleeding
- = (-) secretions

Internal Examinations:

- = pinkish vaginal mucosa (outer)
- = intact hymen

Julie Ann's physical examination showed that her hymen was still intact but her vaginal canal was already open. Dr. Rebastillo declared that such condition might likewise be the result of trauma to the area due to various factors, like bicycle riding or horseback riding or splitting of her legs or the insertion of any kind of object into the vagina. He stated that sexual abuse was likewise a possible factor despite the hymen remaining intact because sexual abuse did not always cause laceration due to certain individuals having elastic hymen.

Dr. Rebastillo explained that the protocol was to interview the patients to determine what had happened to them and to record the interview. He remembered that Julie Ann revealed that she was molested in exchange for money but that she suffered no actual penetration because the man placed his penis between her legs, merely touching the vagina.[19] For her part, Ivy disclosed to him that she was also sexually molested.

The victims were next brought to the police station for the filing of the criminal complaints.

EVIDENCE OF THE DEFENSE

The Defense had 4 witnesses, namely: the accused himself, Cirpiano May, Buenaventura Derpo, and Miguel Bayrante. Their version follows.

At around 7:00 pm on January 2, 2000, the 2 complainants went to buy ice at Derpo's store but the latter told them that no ice was available. Later on, he heard a whistle from Antonio Judin, summoning his children home. Inasmuch as the house of the Judins was only about 40 meters away from his own house, Derpo heard Antonio whipping his 2 daughters. He heard Antonio inquiring from his daughters where they had come from, to which the 2 had replied that they had come from Derpo's store. Derpo then heard Antonio insisting to his daughters to tell the truth, that he had come from the store and that they had been raped. Derpo said that he was even challenged by Antonio, who was drunk at that time.

Derpo insisted that the accusations against him were false and leveled only because Antonio envied his family's lifestyle and at the same time wanted to extort money from him, utilizing his 2 innocent children for the

purpose.[20]

According to Buenaventura Derpo, the son of the appellant, Antonio demanded P250,000.00 in exchange for Derpo's release.[21] Miguel Bayrante, who had accompanied Buenaventura when they went to see Antonio at his house, corroborated Buenaventura.[22]

THE RTC DECISION

On February 18, 2003,[23] the RTC promulgated its decision disposing as follows:

WHEREFORE, premises considered, the Court finds accused Salvador Derpo GUILTY beyond reasonable doubt of STATUTORY RAPE defined and penalized in Article 335 of the RPC, as amended by R.A. 7659 and R.A. 8353, in Crim. Case No. 1418, and sentenced him to RECLUSION PERPETUA. The period of detention is credited in his favor in accordance with Art. 219 of the RPC; to indemnify the victim of the sum of P50,000.00 as civil indemnity; P50,000.00 as moral damages plus P25,000.00 exemplary damages.

In Crim. Case No. 1417, the Court finds accused Salvador Derpo GUILTY beyond reasonable doubt of Attempted Rape, the penalty for attempted rape is two (2) degrees lower than the imposable penalty of Reclusion Perpetua for simple rape. Two (2) degrees lower is Prision Mayor or 6 years 1 day to 12 years. Applying the indeterminate Sentence Law, and in the absence of any mitigating or aggravating circumstance, the maximum of the penalty to be imposed upon the accused shall be taken from the medium period of Prision Mayor, the range of which is 8 years, 1 day to 10 years, while the minimum shall be taken from the penalty next lower in degree, which is Prision correccional, the range of which is from 6 months and 1 day to 6 years in any of its periods. To pay the victim P25,000.00 as moral damages and P10,000.00 exemplary damages.

SO ORDERED.[24]

ASSIGNMENT OF ERROR

Hence, this appeal, wherein the accused assigns a lone error to the RTC, to wit:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

ARGUMENTS OF APPELLANT

In substantiation of his assignment, Derpo argues that the testimonies of the 2 victims did not jibe on material aspects; that despite her testimony that she and her sister had been raped, Julie Ann admitted on cross-examination that Derpo did not sexually penetrate her and her sister and that they were only forced by their father to file a criminal complaint against Derpo;[25] that the alleged rape of Ivy did not occur as borne out by the absence of spermatozoa from her vagina and by the laceration that was found to have already healed when she was examined only a few hours following the alleged sexual assault;[26] and that the credibility of the complainants as witnesses was open to question in view of their contradictory statements, rendering the Prosecution not able to discharge the burden to establish the guilt of the accused beyond reasonable doubt.

COUNTER- ARGUMENTS OF APPELLEE

The Office of the Solicitor General (OSG) counters that the argument of Derpo is misplaced since the rape of Julie Ann was undoubtedly not consummated, which was precisely why the trial court convicted Derpo only of attempted rape; that with regard to the rape of Ivy, it is already settled in jurisprudence that the absence of spermatozoa from the female sexual organ is not evidence that a woman was not raped; that the testimony of Julie Ann that Derpo failed to insert his penis into the vagina of Ivy was purely hearsay; that the ill motive for the filing the charges against him imputed by the accused to the father of the victims should be rejected as a desperate attempt of the accused to exculpate himself from conviction; that the trial court correctly regarded the imputation as flimsy and weak; that it was improbable for 7-year old Julie Ann and 10-year old Ivy to concoct or contrive a harrowing tale of defloration to their father unless they had been truly aggrieved; and that no father in his right mind would sacrifice his daughters' honors to give vent to the alleged grudge knowing that his daughters' psyche would be damaged and they would be tarred for life.[27]

RULING

In all criminal prosecutions, the State is required, in the discharge of its burden of establishing all the essential elements of the crimes with which the accused are charged, to establish beyond a reasonable doubt that the accused are guilty of the crimes in order to warrant a conviction; and in the absence of such degree of proof of guilt, the accused are entitled to an acquittal.

Considering that an appeal in a criminal case opens the entire record to careful scrutiny,[28] we will leave no factual stone unturned in reviewing the convictions. We focus first on the lone error that the appellant has called our attention to but we are not limited to such error, because we have the duty to sift the records and find other errors to warrant a modification or reversal as in a trial de novo.

Criminal Case No. 1417

The RTC found the accused guilty of attempted rape only because:

From the victim's testimony and those of her witnesses, it was proven that the accused Salvador Derpo did not succeed in inserting his penis into the vagina of Julie Ann Judin. There was nothing in the victim's testimony that the male penis reached the labia of the pudendum of the victim's vagina. She and her witnesses only said that "his penis was touching the vagina." In the absence of a showing of the slightest penetration of the female organ, there can be no consummated rape. In a plethora of cases the Supreme Court held:

A grazing of the surface of the female organ or touching the mons pubis of the pudendum is not sufficient to constitute rape (people vs. Campuhen 329 SCRA 270 (2000).

x x x

But in the absence of any showing of the slightest penetration of the female organ, ie., touching either labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness, (People vs. Francisco G.R. Nos. 135201-02 March 15, 2001)[29]

The OSG concurs with the RTC.

Rape is attempted when the offender commences the commission of the crime directly by overt acts but does not perform all the acts of execution which should produce the crime by reason of some cause or accident other than his own spontaneous desistance.[30] In order to convict an accused of consummated rape, however, partial, full or complete penetration of the penis in the vaginal orifice of the victim is not necessary,[31] for the mere touching

between the erect penis of the offender and the labia majora of the pudendum of the victim already constitutes consummated rape.[32] Indeed, the slightest penetration consummates rape. In this connection, Justice Cruz's graphic description of the degree of the penetration necessary to consummate rape rendered in *People v. Salinas*[33] is most appropriate:

In rape cases, there are no half measures or even quarter measures nor is their gravity graduated by the inches of entry. Partial penile penetration is as serious as full penetration; the rape is deemed consummated in either case. In a manner of speaking, bombardment of the drawbridge is invasion enough even if the troops do not succeed in entering the castle.

Considering that the RTC found only attempted rape, and the OSG concurred with the RTC, we have then to ascertain whether the penis of the accused entered the labial threshold of the victim's sex organ. There lies the very thin line that separates consummated rape from attempted rape. In *People v. Campuhan*,[34] the very thin line of distinction has been delineated:

xxx touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis, as in this case. There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. As the labias, which are required to be "touched" by the penis, are by their natural situs or location beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape.

The pudendum or vulva is the collective term for the female genital organs that are visible in the perineal area, e.g., mons pubis, labia majora, labia minora, the hymen, the clitoris, the vaginal orifice, etc. The mons pubis is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the labia majora or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the labia majora is the labia minora.[35] Jurisprudence dictates that the labia majora must be entered for rape to be consummated, and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the mons pubis of the pudendum is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, i.e., touching of either labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.

Upon a careful consideration of the trial record, we find that the RTC did not properly consider several decisive facts that established the consummation of the rape of Julie Ann. We rule that the accused was guilty of consummated rape against Julie Ann.

To begin with, Julie Ann testified on August 30, 2000, describing Derpo's sexual assault on her that caused her to suffer pain in her vagina, as follows:

xxx

Q: Did he insert his penis into your vagina?

A: Yes, sir.

Q: Was he able to succeed by inserting his penis to your vagina?

A: Yes, sir.

Q: What did you feel, did you feel pain?

A: Yes, sir.

Q: In what part of your body did you feel pain?

A: In my vagina.

Q: Do you know why your vagina was painful?

A: Yes, sir.

Q: Why?

A: Because he was on top of me.

Q: His penis was inside your vagina?

A: Yes, he was inserting his penis to my vagina.[36]

xxx

Although Julie Ann conceded during her cross examination on August 30, 2000 that Derpo had failed to insert his penis, to wit:

xxx

Q: Are you telling the truth that you were raped by Salvador Derpo?

A: Yes, sir.

Q: But he was not able to insert his penis to you vagina?

A: Yes, sir.[37]

xxx

her following responses to the questions of the trial judge himself established beyond all doubt that Derpo tried hard to insert his penis into her vagina and thereby caused her to suffer pain, as follows:

xxx

Q: When you told us that Salvador Derpo raped you, are you telling the truth?

A: Yes. Sir.

Q: You told us a while ago that he was not able to penetrate, is that right?

A: Yes. Sir.

Q: Was he able to touch your vagina?

A: Yes, sir.

Q: He was trying to insert his penis into your vagina but he was not successful?

A: Yes, sir.

Q: You said you felt pain when he was inserting his penis to your vagina?

A: Yes, sir.

Q: Did you shout because of the pain?

A: No, sir.

Q: What did you say, if any?

A: I told him that's enough.

Q: Did you cry because of pain?

A: No, sir.[38]

xxx

The error of the RTC was to extend to Julie Ann's declaration on cross-examination (that Derpo's penis did not penetrate her) the same interpretation that an adult person would give to the term penetration. To comprehend what had truly befallen her, the RTC should have appreciated and weighed her declaration in the context of her lack of experience and as reflective of her tender age, youthful innocence and plain child's naivete about the matter. As judges, we should not delude ourselves into believing that a 7-year old child would see or know the finer distinction between attempted rape and consummated rape, between touching and penetration. Consequently, her reply that she felt pain from Derpo's effort of inserting his penis in her vagina tilted the delicate balance of meaning between mere touching and slightest penetration in favor of the latter, wiping out all incertitude from our mind about the rape being consummated.

We give full credit to the testimony that Julie Ann felt pain in her genitalia because Derpo was exerting effort to insert his penis into her genitalia considering that such testimony issued from the mouth of a very young child who could not yet foresee the impact of the statement. Her candor and sincerity were not to be doubted. Consequently, her feeling pain was a sure indication that the erect penis of Derpo, forcing its way inside, really entered her genitalia to some extent. It is common sense to hold so, for she would not feel the pain in her genitalia unless Derpo's penis was poking its way in. Clearly, the touching went beyond mere epidermal contact of the penis and the female genitalia.

In other words, there was slightest penetration. As Justice Mendoza observes in *People v. Clopino*: [39]

It is not necessary, in order to have rape, that accused-appellant succeed in having full penetration. The slightest touching of the lips of the female organ or of the labia of the pudendum constitutes rape. Accused-appellant is certainly wrong when he states that because his penis was not able to penetrate the vagina despite his efforts to do so, the crime should only be either attempted rape or acts of lasciviousness. As the Solicitor General rightly states, it can be logically concluded that when the accused-appellant was trying to insert his penis into the victim's vagina, his penis touched the middle part of the complainant's vagina and penetrated the labia of the pudendum. It is impossible for the penis of the accused-appellant not to touch the labia of the pudendum in trying to penetrate her. xxx

Secondly, when Ivy's turn to testify came, the RTC felt the need to ask her about what she knew of the crime committed against her sister. Ivy's answer implied that Derpo did not penetrate Julie Ann's genitalia only because her vaginal orifice was too small for Derpo's penis to enter. Thus, Derpo remarked, as recalled by Ivy, that he would do the act on Julie Ann once she was grown-up (If you are already grown-up, that is the time for me to do it).[40]

Even so, the penis entered the labial fold of Julie Ann's in a degree that caused her pain in that area. That was all that was necessary to commit consummated rape.[41] Full penetration of the victim's genital organ is not required to sustain a conviction for rape;[42] in fact, rape is considered to have already been consummated as long

as there was an attempt to insert, even without rupture of the hymen.[43]

As earlier indicated, to establish consummated rape, the proof must be convincing that the accused's penis touched either labia of the genitalia of the victim. Campuhan explains that the labias, which are required to be touched by the penis, are by their natural situs or location beneath the mons pubis or the vaginal surface, that to touch the labias with the penis is to attain some degree of penetration beneath the surface; hence, the erect penis touching the labia majora or the labia minora of the pudendum constitutes consummated rape.[44]

Thirdly, in Julie Ann's medical certificate,[45] Dr. Rebustillo revealed that her vaginal orifice was already open due to trauma that was possibly caused by factors that included sexual abuse, viz:

xxx

Q: Doctor, would you please explain your finding in medical certificate you issued to Julie Ann Judin?

A: According to my examination of the patient Julie Ann Judin there are no physical finding but in examining her vagina I found out the vaginal opening, open vaginal canal but the hymen is still intact and there is no bleeding or any kind of secretion inside the vaginal canal, I have not done microscopic examination since there is no specimen.

Q: Doctor, would you please explain of the significance of this open vaginal canal?

A: This may indicate that there is trauma happened to vagina, like if the patient riding a horse, bicycle or the patient actually split her legs or there is a kind of object inserted inside the vagina.

Q: How about sexual abuse?

A: That could be possible, it may not mean there is always laceration in the hymen since some people have elastic hymen and it will not have laceration even if you inserted any object.[46]

xxx

Dr. Rebustillo's finding and his explanation that there need not always be a laceration of the hymen even if a hard object was inserted complemented the testimony of Julie Ann about the pain that she had suffered.

In fine, the totality of the evidence established the consummated rape regardless of the lack of any deep laceration in the vagina of Julie Ann or of her hymen remaining intact. According to *People v. Gabayron*,[47] the absence of any deep laceration from the victim's vagina and the fact that her hymen was intact do not negate rape because the rape was committed even with the slightest penetration; neither the presence of a laceration in the vagina nor the breakage of the hymen was essential to prove that a victim had been raped, for medical research has even pointed out that negative findings about them are of no significance because the hymen might not be torn despite repeated coitus and because there have been in fact many cases of pregnancies reported in women with unruptured hymen.

Criminal Case No 1418

The evidence against Derpo cannot be denied. Ivy was straightforward and direct in her description of the rape committed against her by Derpo, to wit:

Pros. Hibo: (to witness Ivy Judin)

Q- How about you, what happened to you while you were inside the house of Salvador Derpo?

A- He undressed me also and put himself on top of me.

Q- After putting himself on top of you and while he was on top of you, what did he do?

A- He inserted his penis on my vagina.

Q- And what did you feel when Salvador Derpo inserted his penis to your vagina?

A- I feel pain.[48]

Question by the Court (to Ivy Judin)

Q- How about you during the time that he was on top of you was he able to penetrate you?

A- Yes, sir.

Q- You are very sure that it entered your vagina?

A- Yes, after the sexual intercourse he even give us a glass of milk to drink.

Q- You said you felt pain in your vagina, did I get you right?

A- Yes.

Q- Did you cry?

A- Yes.

Q- Was it loud?

A- Yes.

Q- Were there neighbors nearby in the place of Salvador Derpo?

Q- Did somebody hear you cry?

A- I was not mindful if somebody heard my cry.

Q- Did you notice anything in your vagina after the accused inserted his penis into it?

A- Yes.

Q- What was it that you noticed?

A- Pain.

Q- Aside from that pain?

A- I felt extreme pain.

Q- Did your vagina bleed?

A- Yes, sir.

Q- You are very sure that accused Salvador Derpo did this to you and your sister July Ann?

A- Yes, sir.

Q- You are not inventing stories against him?

A- No, that is the truth.

Q- You were not coached by anybody in filing a charge against the accused?

A- Nobody coached us in filing this case in court.[49]

Ivy thereby established that she had suffered rape at the hands of Derpo. Her experience was extremely painful. Her testimony was entirely corroborated by the medical certificate.[50] According to *People v. Valdez*,[51] where a rape victim's testimony is corroborated by the physical findings of penetration, there is sufficient basis for

concluding that sexual intercourse did take place.

Yet, Derpo seeks his acquittal of the rape committed against Ivy by relying on and citing Julie Ann's testimony that he had not penetrated Ivy's genitalia; that the victims incurred in inconsistencies and contradictions of each other's recollection of the rapes; that the charges were initiated by the father of the victims due to his ill motives against Derpo; that the father wanted to extort a huge amount of money from Derpo and his family; and that no rape was committed because the medical examination held just hours after the alleged rape showed the absence of spermatozoa and the presence of healed lacerations.

Our consideration of the record reveals nothing by which we might sustain any of Derpo's contentions.

Firstly, reliance on the testimony of Julie Ann was useless for Derpo. At best, Julie Ann's testimony was plainly hearsay, being her declaration about a sexual assault that she herself did not suffer.[52] It is axiomatic, too, that the rights of a party cannot be prejudiced by an act, declaration, or omission of another,[53] except if the act, declaration, or omission is made under the exceptions of agency or partnership, conspiracy, or privity,[54] none of which covered the situation herein. At worst, Julie Ann's testimony reflected her opinion, which was unreliable and did not even come under any of the exceptions allowed for the opinion of a lay witness to be admissible.[55]

Secondly, whatever inconsistencies might have been incurred by the victims' testimonies on the rapes, like their supposedly contradictory statements or their omission of certain details (as perceived by Derpo), were of little (if any) consequence to the determination of whether he had committed rape on Ivy. On the contrary, such inconsistencies (if any) reinforced the verity of the testimonies, signifying that the 2 witnesses did not deliberately pervert the truth in their narrations and that the discordance in their testimonies on collateral matters heightened their credibility, indicative of their testimonies not being coached or rehearsed.[56] Far from being evidence of falsehood, they could justifiably be regarded as a demonstration of their good faith.[57] We also hold that youth and immaturity could be badges of truth,[58] for, according to *People v. Sagara*:[59]

xxx inconsistencies are to be expected of persons of such tender years as the private complainant. Protracted cross-examination of a young girl not accustomed to public trial would produce contradictions which nevertheless would not destroy her credibility. It is an accepted rule that the credibility of a rape victim is not impaired by some inconsistencies in her testimony.

Equally cogent is the following observation on the credibility of rape victims of young and tender age made in *People v. Gagto*:[60]

It goes without saying that in a prosecution for rape, the complainant's credibility becomes the single most important issue. For when a woman says she was raped, she says in effect, all that is necessary to show that rape was committed. Thus, if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.

On this score, it is an accepted precept that testimonies of rape victims who are young and of tender age are credible. Hence, the revelation of an innocent child whose chastity was abused deserves full credence.

Derpo engages in useless nitpicking. We rebuff him because rape victims of young and tender ages are never expected to commit to memory and recall as witnesses all the details of their very debasing and humiliating experiences. *People v. Tabanggay*[61] states it well, that "(t)he victim may not be able to remember and describe every detail of her repulsive experience, precisely because she might in fact be trying to expunge it from her memory, as it is too painful to remember."

Thirdly, Derpo would impute ill motives against Antonio Judin in making his children accuse Derpo of the rapes, but we do not see ill motives behind the charges. What we see, instead, is the determination of a father, outraged by the rapes committed against his young daughters, to bring to the bar of justice their violator. As the record shows, Antonio did not relent in his effort to seek justice for his daughters, bringing them first to the hospital for that unavoidable medical or physical examination and, that done, to the police station to commence the process of the criminal prosecution of Derpo.

It was vain for Derpo to advert to 7-year old Julie Ann's affirmative reply on her cross-examination (asking her whether she was "whipped and physically coerced" by her father to incriminate Derpo as the perpetrator)[62] in the face of the overwhelming evidence that he had raped the victims. Thus, the Supreme Court has held in *People v. Sta. Agata*: [63]

The attribution of evil motives by the accused against the complainant in rape - to the effect that the latter and her sister had both hated him for his stern ways, the father of the complainant - appears to be a desperate attempt of the accused to exculpate himself. Even assuming the truth of the strong animosity between the parties, it is inconceivable that complainant's resentment could have reached such a point as to make her and her grandmother (the accused's own mother) conspire and concoct a charge for so ignominious a crime as rape against complainant's own father. In any case, motive on the part of either the complainant or of the accused becomes material only when the evidence is circumstantial or inconclusive and there is real doubt on whether or not a crime is committed or that the accused has committed it.[64] It should be totally irrelevant when ample direct evidence exists to sustain beyond reasonable doubt an accused's culpability.[65]

We are also skeptical whether Julie Ann had understood the cross-examining counsel's questions.

Moreover, Ivy herself insisted that nobody had coached or influenced her and her sister into filing the charges against Derpo.[66]

Although Defense witness Buenaventura Derpo, the appellant's son, came forward to tell that Antonio had extorted money from the family of the accused in exchange for his release from the accusations, we quickly reject Buenaventura's evidence on extortion as highly improbable because Buenaventura admitted to have himself gone voluntarily to the house of the Judins to initiate the settlement of the cases in behalf of the accused.[67]

Also, the imputation of extortion against Antonio is rejected because no right-thinking parent would sacrifice the honor and virtue of his own very young daughters by falsely denouncing their rapist in the arena of public prosecution and judicial trial and thereby risking his daughters' absolute humiliation in their community through the admission of their sexual violation. We rather think that Antonio only had the honest desire to bring to the bar of justice his daughters' tormentor and to punish him as he deserved.[68]

Finally, Derpo's emphasis on the absence of spermatozoa and the presence of healed lacerations found just hours after the alleged rape deserves no consideration. Ivy's medical certificate might have shown healed hymenal lacerations, indicative of a past sexual experience that she candidly admitted in the course of her testimony, but that hardly affected her credibility considering that the medical certificate likewise mentioned a finding of "new abrasions on outer part of the hymen." To be sure, the presence of healed hymenal lacerations do not negate rape.[69] Neither would the absence of any finding of spermatozoa in Ivy's vagina denigrate the charge of rape because such absence was explainable in so many ways. Such concerns of Derpo have been time and again rejected by the Supreme Court. Typifying such rejection is *People v. Maceda*, [70] where the Supreme Court declares:

Accused-appellant's contention that no rape could have been committed as shown by the deep healed lacerations

and the absence of spermatozoa cannot be given serious consideration. The fact that the lacerations found were healed, and not fresh, does not necessarily negate rape. A freshly broken hymen is not an essential element of rape. For that matter, the medical examination of the victim in rape cases is not an indispensable element for the successful prosecution of the crime as her testimony alone, if credible, is sufficient to convict the accused thereof. As regards the absence of spermatozoa, suffice it to say that Dr. Reyes explained that this could be due to the fact the victim may have washed herself several hours after she had been raped.

THE PENALTIES

Rape is committed by a man having carnal knowledge of a woman by force and without her consent. Carnal knowledge is defined as the act of a man in having sexual bodily connections with a woman.[71]

The rapes charged herein are defined and penalized in the Revised Penal Code, which pertinently provides:

Art. 266-A. Rape; When and How Committed.- Rape is committed.

1) By a man who have carnal knowledge of a woman under any of the following circumstances:

- Through force, threat or intimidation;
- When the offended party is deprived of reason or otherwise unconscious;
- By means of fraudulent machinations or grave abuse of authority; and
- When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

xxx

Art. 266-B. Penalties.- Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

xxx

The death penalty shall also be imposed if the crime of rape is committed with the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

xxx

5) When the victim is a child below seven (7) years old;

xxx

If the woman is under 12 years of age, proof of force and consent becomes immaterial because force is not an element of statutory rape and because the absence of free consent is presumed. Conviction will lie, therefore, provided carnal knowledge is proved. But if the woman is 12 years of age or over at the time she was violated, carnal knowledge must be proven and also that it was done through force, violence, intimidation or threat.[72]

The fact of Derpo having carnal knowledge of the victims having been established beyond reasonable doubt, we next determine the nature of the rapes considering that both informations alleged the special qualifying

circumstances of the victims' minority and their relationship with Derpo as his nieces.

R. A. 7659, effective on December 31, 1993, imposes the death penalty where the rape was committed under any of the circumstances provided under its Sec. 11, including where the victim is under 18 years of age and the offender is the parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree or the common-law spouse of the parent of the victim. Minority and relationship constitute special qualifying circumstances must be alleged in the information and proved during trial.[73]

The records of Criminal Case No. 1417 were not elevated on appeal. Nonetheless, we have available record by which the age of Julie Ann at the time of the rape can be ascertained. In the course of the testimony of Antonio Judin on January 3, 2001, Public Prosecutor Hibo caused the birth certificate of Julie Ann to be marked in evidence as Exhibit C, with the date of her birth stated thereon, July 15, 1992, being marked as Exhibit C-2.[74] It is settled that the best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.[75] Thereby, Julie Ann was shown to be precisely 7 years, 5 months and 17 days old on January 2, 2000, when the rape was committed.

A special qualifying circumstance to justify the imposition of the death penalty in rape is that the victim must be a child below 7 years of age at the time of the rape. Considering that Julie Ann had turned 7 on July 15, 1999, her age was no longer qualifying the rape under Sec. 11 (4), R. A. 7659. Hence, the penalty is reclusion perpetua.

The age of Ivy was also duly proved by her certificate of live birth,[76] which was marked as Exhibit C in Criminal Case No. 1418. The certificate reflected that she was born on September 23, 1989, making her precisely 10 years, 3 months and 9 days old when the rape was committed.

Anent the relationship, Ivy might have declared during the preliminary investigation that the accused was the husband of Sale, a cousin of her mother's,[77] and the appellant's own son Buenaventura Derpo might have admitted that he was related to the father of the victims, the latter being his uncle on the mother's side,[78] but the circumstance of relationship was not thereby competently established. According to *People v. Balbarona*,[79] the relationship of the accused and the victim cannot be established by mere testimony or even by the accused's admission of the relationship. Also, in *People v. Pacheco*,[80] it is held that a more stringent standard of proof must be met by the Prosecution; the mere testimony of witnesses is not enough to dispel doubts regarding the relationship between the accused and the victim. Accordingly, the relationship of the victims and the appellant not having been proved beyond reasonable doubt, the proper penalty is reclusion perpetua.

WHEREFORE, the decision dated February 18, 2003 is AFFIRMED in all respects except for the following MODIFICATIONS:

- In Criminal Case No. 1417, SALVADOR DERPO is found GUILTY beyond reasonable doubt of STATUTORY RAPE defined and penalized under Art. 266-A, Revised Penal Code, and is sentenced to suffer RECLUSION PERPETUA.

- SALVADOR DERPO is ORDERED to indemnify Julie Ann Judin in the sum of P50,000.00 as civil damages, P50,000.00 as moral damages; and P25,000.00 exemplary damages.

SO ORDERED.

LUCAS P. BERSAMIN

Associate Justice

WE CONCUR:

MARTIN S. VILLARAMA JR.

Associate Justice

MONINA AREVALO-ZENAROSA

Associate Justice

[1] The records of Criminal Case No. 1417 (rape of Julie Ann Judin) were not forwarded to the Court of Appeals; hence, the allegations of the the information were taken from the decision, records of Criminal Case No. 1418, at p. 37.

[2] Records, p. 1.

[3] Records, p. 16.

[4] TSN, January 3, 2001, p. 3.

[5] TSN, November 8, 2000, pp. 2-3.

[6] TSN, November 8, 2000, p. 7.

[7] TSN, November 8, 2000, pp. 7-8.

[8] TSN, August 30, 2000, p. 6.

[9] TSN, August 30, 2000, p. 6.

[10] TSN, November 8, 2000, p. 4.

[11] TSN, November 8, 2000, p. 4.

[12] TSN, January 3, 2001, p. 3.

[13] TSN, January 3, 2001, p. 6.

[14] TSN, January 3, 2001, pp. 6-7.

[15] TSN, January 3, 2001, pp. 4-7.

[16] TSN, November 8, 2000, p. 5.

[17] Records, p. 9.

[18] TSN, February 15, 2001, pp. 6-10.

[19] TSN, February 15, 2001, p. 6.

[20] TSN, November 14, 2001, pp. 4-6.

[21] TSN, July 31, 2002, p. 3.

[22]

[22]TSN, September 4, 2002, pp. 3-4.

[23] Records, pp. 37-49.

[24] Records, p. 49.

[25] Rollo, p. 60, p. 7, Appellant's Brief.

[26] Rollo, p. 61, p. 8, Appellant's Brief.

[27] Rollo, pp. 103-114.

[28] *People v. Taño*, 331 SCRA 449 (2000); *People v. Llaguno*, 285 SCRA 124, 147 (1998); *People v. Atop*, 286 SCRA 157, 174 (1998).

[29] Records, p. 47.

[30] Art 6, in relation to Art. 266-A, Revised Penal Code.

[31] *People v. Barredo*, 329 SCRA 120, 128 (March 28, 2000); *People v. Tabugoca*, 285 SCRA 312 (1998); *People v. Salinas*, 232 SCRA 274 (May 6, 1994).

[32] *People v. Escobar*, 281 SCRA 498 (November 6,1997); *People v. Galimba*, 253 SCRA 722 (February 20,

1996); *People v. Sanchez*, 250 SCRA 14 (November 16, 1995); *People v. Lazaro*, 249 SCRA 234 (October 12, 1995); *People v. Rejano*, 237 SCRA 627 (October 18, 1994); *People v. Salinas*, 232 SCRA 274 (May 6, 1994); *People v. Palicte*, 229 SCRA 543 (January 27, 1994).

[33] 232 SCRA 274, 279.

[34] 329 SCRA 270 (March 30, 2000).

[35] Citing *Mishell, Stenchever, Droegemueller, Herbst*, *Comprehensive Gynecology*, 3rd Ed., 1997, pp. 42-44.

[36] TSN, August 30, 2000, pp. 5-6.

[37] TSN, August 30, 2000, pp. 8-9.

[38] TSN, August 30, 2000, p. 12.

[39] 290 SCRA 432 (May 21, 1998).

[40] TSN, November 8, 2000, p. 7.

[41] *People v. Clopino*, 290 SCRA 432 (1998).

[42] *People v. Tabugoca*, 285 SCRA 312 (1998).

[43] *People v. Calma*, 295 SCRA 629 (1998).

[44] 329 SCRA, at pp. 280-281.

[45] Record, pp. 38-39, Decision pp. 2-3.

[46] TSN, February 15, 2001, pp. 5-6.

[47] 278 SCRA 78, 93 (August 21, 1997).

[48] TSN, November 8, 2000, p. 3.

[49] TSN, November 8, 2000, pp. 7-8.

[50] Record, p. 16.

[51] 421 SCRA 376 (January 29, 2004); *People v. Musa*, 371 SCRA 234 (Nov. 29, 2001).

[52] Rule 130, Rules of Court, states:

Sec. 36. Testimony generally confined to personal knowledge; hearsay excluded. - A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules. (30 a)

[53] Sec. 28, Rule 130, Rules of Court.

[54] Rule 130, Rules of Court, gives the following exceptions to the *res inter alios acta* rule, to wit:

Sec. 29. Admission by co-partner or agent. - The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party. (26a)

Sec. 30. Admission by conspirator. - The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act of declaration. (27)

Sec. 31. Admission by privies. - Where one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property, is evidence against the former. (211)

[55] Rule 130, Rules of Court, provides:

Sec. 30. Opinion of ordinary witnesses. - The opinion of a witness for which proper basis is given, may be received in evidence regarding -

(a) The identity of a person about whom he has adequate knowledge;

(b) A handwriting with which he has sufficient familiarity; and

(c) The mental sanity of a person with whom he is sufficiently acquainted.

The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person. (44)

a)

- [56] *People v. Reyes*, 69 SCRA 476; *People v. Doria*, 55 SCRA 435.
- [57] *People v. Cabiltes*, 25 SCRA 112; *People v. Alcantara*, L-26568; June 30, 1970.
- [58] *People v. Andales*, 422 SCRA 253 (February 5, 2004).
- [59] 267 SCRA 671 (February 7, 1997).
- [60] 253 SCRA 455 (February 9, 1996).
- [61] 334 SCRA 575 (June 29, 2000).
- [62] TSN, August 30, 2000, pp. 9-10.
- [63] G.R. No. 101309, June 1, 1995.
- [64] Citing *People v. Cayetano*, 223 SCRA 770.
- [65] Citing *People v. Magpayo*, 226 SCRA 13; and *People v. Joya*, 227 SCRA 9.
- [66] TSN, November 8, 2000, p. 8.
- [67] TSN, July 31, 2002, pp. 3-5.
- [68] *People v. Las Piñas*, 377 SCRA 377 (February 20, 2002).
- [69] *People v. Orilla*, 422 SCRA 620 (February 13, 2004). We note that in his medical certificate, Dr. Rebustillo stated that his internal examination indicated that Ivy's "probably not intact hymen admits finger with ease."
- [70] 353 SCRA 228 (February 28, 2001).
- [71] *People v. Orita*, 184 SCRA 105 (April 3, 1990); citing *Black's Law Dictionary*, Fifth Edition, p. 193.
- [72] *People v. Dimaano*, 469 SCRA 647 (September 14, 2005).
- [73] *People v. Barcena*, 482 SCRA 543 (February 16, 2006).
- [74] TSN, January 3, 2001, p. 3.
- [75] *People v. Pruna*, 390 SCRA 577,604 (October 10, 2002).
- [76] Record, p. 30.
- [77] Record, p. 11.
- [78] TSN, July 31, 2002, p. 2.
- [79] 428 SCRA 127 (April 28, 2004).
- [80] 424 SCRA 164 (March 2, 2004).

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