

**PEOPLE OF THE PHILIPPINES, PLAINTIFFS AND APPELLEES, VS.
TIBURCIO BACULI Y ELPEDES, DEFENDANT AND APPELLANT.***G.R. No. 110591. July 26, 1995*

Ponente: NARVASA, C.J.

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Of all so-called heinous crimes, none perhaps more deeply provokes feelings of outrage, detestation and disgust than incestuous rape. It is indeed difficult to find a more perverted form of sexual aberration than this bestial felony. It is undeserving of society's compassion or tolerance. Regrettably, it is not of infrequent occurrence, as the records of the Court reveal. Hence, it is that the latest amendments of the Revised Penal Code have prescribed the supreme penalty of death for rapes by parents of their minor daughters.

In the case at bar, appellant Tiburcio Baculi is charged with, but asserts his innocence of, the rape of his fourteen-year old daughter, Theresa. He challenges his conviction therefor by the Trial Court, theorizing that that conviction is precluded by the suspect character of his daughter's motives, and the fact that forensic examination of his daughter disclosed that she remains a physical virgin, her hymen being intact and no extra-genital injury having been detected.

Theresa is the youngest of nine (9) children. Her father, Tiburcio, is a vaciador,[1] who plies his trade in the day and comes home at night to their house in Sitio Salvacion, Muntinlupa. Her mother, Erlinda, is a laundry woman who, from Monday to Friday, works at the Pacita Complex in San Pedro, Laguna, and on Saturdays, leaves for Manila to do more laundry work, returning home on Monday afternoon.

On the night of Sunday, March 8, 1992, Theresa, fourteen (14) years of age at the time, found herself alone with her father at their home. Her unmarried brother, who was living with them, happened to be staying at the house of another sister. Tiburcio arrived home at around 6 o'clock that evening. He called Theresa and peremptorily ordered her to undress herself and lie down on the bed, while he removed his own clothes. Fearful of grave physical harm, her father being wont to keep his bolo close by, Theresa tearfully obeyed. Tiburcio kissed, fondled and caressed his daughter's unresisting body, and then inserted his penis into her. After satisfying himself, Tiburcio took hold of his bolo and told Theresa he would kill her if word of his deed ever got out. As would subsequently be revealed, this was not the first sexual violation by Tiburcio of his daughter. This probably explains why despite the enormity of the crime just committed against her, Theresa thereafter simply proceeded to do the quite prosaic chore of cooking dinner. The rest of the night passed without further incident.

Her mother, Erlinda, arrived home the next night, and noted that Theresa appeared listless (nanlalata). Erlinda asked Theresa if anything was wrong; but the latter could not tell her of the rape because of her father's threat to kill her.

On March 13, 1992, obviously weighed down by her humiliation and shame, Theresa left her parents' house and moved to the home of her older sister, Ofelia, at the Camella Homes Subdivision, Tunasan, Muntinlupa. Her parents looked for her and eventually traced her whereabouts to that subdivision. On March 19, 1992, Tiburcio

and his wife, Erlinda, went to Ofelia's house, obviously to bring Theresa home.

Ofelia denied that Theresa was with her, and refused to let her father in. He got angry and apparently caused no little commotion in the place. Security guards in the subdivision intervened and, observing that Tiburcio was armed with a knife and a mace (ball and chain), called for police assistance.[2] One of the responding police officers, SPO3 Warlindo Pareja of the PNP detachment in Muntinlupa, arrested Tiburcio for illegal possession of deadly weapons and brought him to the police station. In due course, Pareja drew up a complaint for illegal possession of deadly weapons against Tiburcio, which was filed in the Municipal Trial Court.[3]

When Erlinda and her daughters were interviewed by SPO3 Pareja in the morning following Tiburcio Baculi's arrest, they told the investigators they wished to file a complaint for rape against Tiburcio Baculi. Another police officer, SPO3 Aniceto Acabo, thereupon took down Theresa's statement,[4] which was substantially to the effect that her father had raped her, not only on March 8, 1992, but several times prior thereto, as early as when she was twelve (12) years old, although she could not remember the exact dates of the sexual violations; and that when she once tried to tell her mother of the disgusting offenses, she was kicked by her father.[5] Theresa was afterwards brought to the National Bureau of Investigation for medico-legal examination,[6] the results of which, embodied in a report entitled "Living Case No. MG-92-274," were subsequently submitted in evidence.[7]

It seems that Theresa's sister, Ofelia, had also suffered from her father's monstrous libidinousness. According to her, she was herself raped by Tiburcio when they were residing in Davao;[8] and it was a second attempt by Tiburcio to rape her when she was seventeen (17) years of age that constrained her to leave home.[9]

Preliminary investigation then followed after which the Office of the Public Prosecutor for Makati filed an information for rape against Tiburcio Baculi, viz.:

"The undersigned Complainant, 14 years of age and assisted by her mother, hereby accuses her father, Tiburcio Baculi y Elpedes, of the crime of Rape, committed as follows:

"That on or about the 8th day of March, 1992 in the Municipality of Muntinlupa, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will.

"CONTRARY TO LAW."[10]

The foregoing facts were culled by the Trial Court from the evidence given by prosecution witnesses: Theresa Baculi; Erlinda Baculi; Ofelia Baculi; Dr. Anabelle Solayman of the NBI; SPO3 Warlindo Pareja.

Tiburcio Baculi testified in his behalf. Essentially, his testimony is that he arrived home at 7:45 p.m. in the evening of March 8, 1992 and found Theresa watching television; that at around 8:00 p.m., her mother arrived; that after dinner, they slept together; and that he did not rape his daughter.[11] He claimed that the complaint filed against him was pure fabrication; that Theresa was instigated by her mother and sisters to accuse him of rape out of deep resentment for his strictness as a parent; that he had indeed been a strict father, because he did not want Theresa to become an unwed mother, like her sisters. He denied raping his other daughter, Ofelia. He also said that in Davao, where they lived some years earlier, he had filed a complaint against his wife for maintaining relations with another man.[12]

Tiburcio deposed that in search of Theresa, he had gone first to the house of his daughter Lilia in Camella Homes, armed at the time with a knife and mace; that he was told by a security guard that Theresa had been seen going to the house of Lilia, carrying an umbrella; that, however, Lilia told him Theresa was not there; that he had called up his eldest son, Arnel, and then proceeded to the house of his other daughter Ofelia, asking them to help him search

for Theresa; that both of them refused to help him, for which reason he got mad and began shouting; that the security guard called the police, took his knife and mace away from him and turned him over to the policemen when they arrived.[13]

The court a quo gave no credence to his story. It found instead that the proofs of the prosecution sufficed to establish his guilt beyond reasonable doubt, and rendered a judgment of conviction, the dispositive portion of which reads as follows:[14]

"Wherefore, premises considered, this Court finds accused Tiburcio Baculi y Elpedes GUILTY beyond reasonable doubt of the crime of Rape and there being neither mitigating nor aggravating circumstances to affect the penalty, this Court sentences him to life imprisonment, or to a detention in prison for all of his natural life. By way of indemnity, to pay his victim the sum of P50,000.00 and (the) cost of this litigation."

In the appeal at bar, Tiburcio Baculi contends that the Trial Court erred in convicting him of the crime of rape with which he was charged.[15] After a painstaking review of the case, the Court finds no fitting conclusion than to sustain the judgment of the court a quo except in so far as the penalty imposed, as shall later be explained.

Baculi's first argument is that the complaint was a mere fabrication, motivated by a desire for revenge, and in support cites the testimony of Theresa's sister, Ofelia, viz.: [16]

"Q:

And now that you are grown up, it comes (sic) to your mind to (seek) revenge (for) what your father did to your mother and your sisters?

A:

Yes, sir.

Q:

That is why you forced your sister to file a case?

A:

Yes, sir.

Q:

And that's why you gave the support about (sic) the incident?

A:

Yes, sir."

Relying on this short excerpt of Ofelia's testimony, accused would persuade the Court that Theresa's complaint against him was instigated by a bitter sister, seeking vengeance for the many years of maltreatment suffered by their mother and herself at his hands. This theory, however, is negated by the Ofelia's other statements relative to the filing of the complaint, given in response to questions propounded by the trial judge, viz.: [17]

"Q:

All night of March 19 when Theresa was there (referring to Camella Homes) she did not tell you about the incident (sic) happened to her and your father except the kicking incident?

A:

Yes, your Honor.

xxx xxx xxx

Q:

And what you told your mother was only (sic) what you heard from Theresa when she was interrogated by the Police?

A:

Yes, your Honor.

Q:

Because Theresa did not tell you personally?

A:

Because my sister was afraid, your Honor.

Q:

And you were the one who encourage(d) your mother to file charges against your father?

A:

Yes, your Honor.

Q:

You mean by herself or your mother, did (sic) not want to file a complaint against him?

A:

My mother also wants to file a complaint against my father, your Honor.

Q:

So, even without your encouragement your mother would still file a complaint?

A:

Yes, that's what she told me, your Honor.

Q:

What about Theresa does she want to file a complaint against your father?

A:

Yes, your Honor.

Q:

And she wants to file a complaint against your father and because your mother and yourself encouraged her?

A:

We did not pursue (sic) her to file a complaint it was on herself (sic), your Honor."

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Although the language of the transcription is far from ideal, it is plain therefrom that it was neither Ofelia nor her mother who caused Theresa to file the complaint. In fact, they fully learned of Theresa's ordeal only during her interrogation by Officer Acabo at headquarters.

Moreover, the willingness of the complainant to face police investigators and to submit to a physical examination is mute but eloquent testimony of the truth of her charge against her own father. If she were merely prodded to relate a fabricated story to build up this serious charge, she would recoil at the possibility of being caught in prevarication. She should feel deterred by the grave consequences of such wilful falsehoods which could easily be unmasked by the medical findings that would be made after a through examination of her body. As it turns out, she cried upon learning that the findings were negative,[18] no doubt a spontaneous reaction to the possibility that she may never obtain justice for the outrage committed by her father. It was the truth of her story that gave her the courage to face interrogation and medical examination, both effective means of verifying the truth of her serious accusation.[19]

The accused argues, nonetheless, that the finding of guilt does not conform with the physical evidence. Indeed, the findings of the medico-genital examination show that Theresa was physically a virgin; her hymen was intact and the examining physician concluded that this precludes the possibility that she had been penetrated by a fully erect average size male penis. The NBI doctor made the following findings:

"1. No evident sign of extragenital physical injury noted on the body of the subject at the time of the examination.

"2. Hymen intact and its orifice small (2.0 cm.) as to preclude penetration of an averaged sized adult male organ in full erection without producing hymenal injury."

And compounding matters, Baculi further contends, is Theresa's testimony that this was not the first time she had been raped by her father, viz.:[20]

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Q.

But this is only the first instance that as you said your father did this to you?

A:

There was another incident, Your Honor.

Q:

Was it before March 8?

A:

Before March 8, your Honor, there was an incident that took place.

Q:

When, would you remember when was it (sic)?

A:

1989, your Honor, I do not remember what month.

Q:

In 1989, do you remember how many times this happened?

A:

It happened so many times, your Honor.

Q:

What about in 1990?

A:

It also happened in 1990, your Honor.

Q:

What about in 1991?

A:

There was also an incident that happened, your Honor.

Q:

In other words, this incident or this act by your father has been happening since 1989 up to 1992?

A:

Yes, your Honor.

Q:

And that is the reason why in 1992 you did not resist him anymore because he had been in the habit of doing this to you?

A:

Yes, your Honor."^[21]

* * * * *

At first blush, it would seem incredible that despite repeated intercourse with her father over a period of four years, Theresa retained an intact hymen without signs of injury. This was, however, explained by Dr. Anabelle Solayman, who confirmed the possibility of an object entering the lip of the genital without rupturing the hymen, as in the case of vulvar coitus, where complete penetration of the female organ is unnecessary.^[22] To be sure, neither the complete severance of the hymen nor extragenital injuries are required to warrant the conviction of the accused.

It must be stressed that a medical certificate is not conclusive as to whether or not rape is committed.^[23] The force or violence required in rape cases is relative. What is essential is that the force used is sufficient to consummate the purpose which the offender had in mind, or to bring about the desired result.^[24] In using force, it is not even necessary that the offender is armed with a weapon, as the use of a weapon serves only to increase the penalty.^[25] In sum, the absence of external signs or physical injuries does not negate the commission of the crime of rape.^[26] It is the overpowering moral influence of the father over the daughter that takes the place of violence, or the offer of resistance required in rape cases committed by an accused otherwise having no blood relationship with the victim.

The medical finding that the hymen is intact does not negate rape. Settled is the rule that full penetration of the vaginal orifice is not an essential ingredient in the commission of the crime of rape.[27] Penetration of the penis by entry into the lips of the female organ even without rupture or laceration of the hymen suffices to warrant conviction for rape.[28]

The Trial Court's conclusions respecting Baculi's guilt of the rape of his daughter will thus have to be upheld. Not so, however, respecting the penalty meted out.

In the first place, the Court a quo imposed the penalty of "life imprisonment" on the appellant. This is error, since the crime committed by the appellant, i.e., rape defined by Article 335 of the Revised Penal Code, is punished by reclusion perpetua, a penalty which, as this Court has repeatedly pointed out, is not the same as "life imprisonment." It is germane to advert to the restoration by Republic Act No. 7659 of the death penalty as a penalty for rape when its commission is attended by certain specified circumstances,[29] which penalty, however, cannot be imposed in the case at bar, since the restoration came into effect after the commission of the crime charged.[30]

Now, the same R.A. 7659 also provides that the penalty of reclusion perpetua shall range from twenty (20) years and one (1) day to forty (40) years.[31] Deeming the penalty of reclusion perpetua to have been thereby converted into a divisible penalty, and construing the law in a manner favorable to the accused, the Office of the Solicitor General theorizes that the penalty to be meted out should be "the medium period of reclusion perpetua." The theory is unacceptable. The matter of whether reclusion perpetua may be considered a divisible penalty in light of R.A. 7659 was passed upon and settled by this Court in an extended Resolution in *People v. Lucas*, G.R. No. 108172-3, promulgated on January 9, 1995.[32] The Court En Banc, "(a)fter deliberating on ** (a motion for clarification filed by the People in said case), and re-examining the legislative history of R.A. No. 7659, ** (concluded) that although Section 17 of R.A. No. 7659 has fixed the duration of reclusion perpetua from twenty (20) years and one (1) day to forty (40) years, there was no clear legislative intent to alter its original classification as an indivisible penalty. It shall then remain as an indivisible penalty.

WHEREFORE, the appealed decision is hereby AFFIRMED in all respects except only as regards the penalty of imprisonment which should be as it is hereby altered from "life imprisonment, or to a detention in prison for all of his natural life," to reclusion perpetua, with costs against accused-appellant.

SO ORDERED.

Regalado, Puno, and Mendoza, JJ., concur.

[1] One who sharpens knives, scissors, blades, and the like.

[2] According to the transcript, he was carrying a "chainball."

[3] TSN of March 9, 1993 at pp. 12-6.

[4] Id. at pp. 17-9; see also Exh "A," Records at pp. 73-4.

[5] TSN of August 18, 1992 at pp. 32-7.

[6] See Exh. "D," Records at p. 75.

[7] See Exh. "E."

[8] TSN of October 22, 1992 at pp. 11-4 (SEE Exh. C).

[9] *Id.* at pp. 11-4.

[10] Filed by 4th Assistant Prosecutor Lorraine O. de Joya, March 27, 1992. See Exh. "B;" Records at p. 3.

[11] TSN of April 22, 1993 at p. 3 et seq.

[12] *Id.* at pp. 5-6.

[13] *Id.* at pp. 3-4.

[14] Decision of Judge N. C. Perello, May 5, 1993; Rollo at 12, et seq; italics supplied.

[15] See Appellant's Brief at p.1; Rollo at p. 27.

[16] TSN of October 22, 1992 at p. 18; see also Rollo at pp. 37-8.

[17] *Id.* at p. 19.

[18] TSN of July 23, 1992 at p. 13.

[19] *Peo. v. Ramos*, G.R. No. L-64656, 167 SCRA 476, November 18, 1988; see also *Peo. v. Clarin*, G.R. No. 47200, 108 SCRA 680, October 30, 1981.

[20] TSN of August 18, 1992 at pp. 32-4.

[21] Italics supplied.

[22] TSN of March 9, 1993 at p. 6.

[23] See *Peo. v. Dela Peña*, G.R. No. 104947, 233 SCRA 573, June 30, 1994; *Peo. v. Almenario*, G.R. No. 66420, 172 SCRA 269, April 17, 1989.

[24] *Peo. v. Mendoza*, G.R. 74653, 163 SCRA 568, July 26, 1988.

[25] *Peo. v. Sato*, G.R. No. L-47911, 163 SCRA 602, July 27, 1988.

[26] *Peo. v. Poculan*, G.R. Nos. 70565-7, 167 SCRA 176, November 9, 1988.

[27] See *Peo. v. Dela Peña*, *supra* at note 23; *Peo. v. Navarro*, 221 SCRA 684 (1993); *Peo. v. Abonada*, G.R. 50041, 169 SCRA 530, January 27, 1989; *Peo. v. Amores*, 58 SCRA 505 (1974); *Peo. v. Pastores*, 40 SCRA 498 (1974).

[28] See *Peo. v. Dela Pena*, *supra*; *Peo. v. Abonada*, *supra*; *Peo. v. Tabago*, G.R. 69778, 167 SCRA 65, November 8, 1988; *Peo. v. Estrella*, G.R. 71464, 164 SCRA 114, Aug. 4, 1988.

[29] "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes," effective January 1, 1994; relevant portion of Sec. 11 is reproduced hereunder, viz.: " *** ** "

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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."

[30] SEE preceding footnote 28.

[31] Sec. 21.

[32] Citing *Peo. v. Reyes*, 212 SCRA 402 (1992).

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