

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEOFILO Taneo, ACCUSED APPELLANT.

G.R. No. 117683. January 16, 1998

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PER CURIAM:

Appellant Teofilo Taneo was charged[1] and convicted of the crime rape and accordingly sentenced by the Regional Trial Court, Branch 5 of the Cebu City[2] to suffer “the penalty of death” and “to indemnify the offended woman, Mencina Taneo, the amount of P 50,000.00 as moral damages and the amount of P 25,000.00 as exemplary damages, as a deterrent to other fathers from sexually molesting his own daughters; and to pay the costs.”[3] On automatic review, appellant assigns as errors the following:

“I

“THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESS MENCINA Taneo WHICH IS HIGHLY INCREDIBLE AND CONTRADICTORY.

“II

“THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING IN EVIDENCE TH MEDICAL FINDINGS OF DRA. GEMMA MACACHOR AS CONDUCTED ON THE PERSON ON HER PRIVATE COMPLAINANT MENCINA Taneo AND IN INCORRECTLY ADOPTING ITS OWN BIASED INTERPRETATION OF THE PHYSICAL EVIDENCE ON RECORD WHICH CLEARLY IS BEYOND ITS ADJUDICATIVE POWER TO DO SO.

“III

“THE TRIAL COURT GRAVELY ERRED IN NOT GIVING CREDENCE TO THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT AND IN UNFAVORABLY PRESUMING AGAINST THE ACCUSED HIS FAILURE TO PRESENT AS DEFENSE-WITNESS ONE LETICIA MANGUBAT THUS SHIFTING THE BURDEN OF PROOF ONHTDEFENSE WHICH IS CONTRARY TO THE RULES OF PROCEDURE.

“IV

“THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.”[4]

Aptly stated by the trial court are the following fact with corresponding page reference to the stenographic notes and exhibits supplied by the Office of the Solicitor General which we have verified to be duly supported by the records:

“On May 23, 1994, Mencina Taneo, a barrio lass, with physical virginity, was with her parents and three (3) younger sisters in their house at Sitio Bihang, Bongoyan, Borbon Cebu. She was then below 18 years of age, having been born on June 6, 1976 (p. 3 TSN, July 25, 1994). Her mother had just recovered from a fever (p.

17, supra). Despite the condition of her mother, her father, Teofilo Taneo, who just arrived from his carpentry work in Cebu City, insisted that her mother get the sack of corn grits from a store (pp. 5-6, TSN, Aug. 9, 1994) about one kilometer away from their house (p. 4, tsn, July 25, 1994). Her father used to fetch and bring the sacks of corn grits for their consumption, but on that day, he insisted and prevailed upon his wife to get the sack of corn grits (p. 22, supra).

“After lunch, about 3:00 o’clock in the afternoon, Mencina’s mother to avoid further altercation with her husband, went to the store, accompanied by her other daughter Ginda, to get the corn grits. But before her mother left their house, she instructed Mencina to look after her infant sister (pp. 4-6 supra). Together with Mencina in the house after her mother left that afternoon of May 23, 1994 were her father Teofilo Taneo, her sisters Aida (seven years old), Aiza (five years old), and Dyna (the infant). At that time, Mencina’s eldest brother Leonito, served as a conductor of the passenger jeepney owned by Lorenzo Suson. Another brother Rico, was cleaning his fram in the land of Boy Franco, while her younger sister, Emma, was also in the farm of Boy Franco (pp 5-6, supra).

“Mencina watched her sister and put her to sleep on a hammock. When her baby sister was already asleep, she also went to sleep as her wont after lunch (p. 5 supra). While she was asleep, her two young sisters were sent away by her father Teofilo Taneo to the farm so he could be alone with her (p.1 TSN, July 25, 1994). This she learned later (p. 21, supra). She was awakened by the pain in her genetalia and when she opened her eyes, she saw her father Teofilo Taneo already naked from the waist down and on top of her. She also noticed that the cycling pants and black panty she wore before she went to sleep were already removed, and leaving her half-naked. Her father kept on inserting his finger into her vagina; his left arm pinned her down while he was on top of her. She tried to free herself, but to no avail as persisted in his lustful intention and overpowered her – threatening her with a bolo and told her not to shout (pp. 7-9, supra).

“To her pleas of mercy, her father Teofilo said that he would rather be the first to taste her virginity than her boyfriend, as he was the one who raised her to womanhood. After removing his finger, her father inserted his penis to her vagina (p. 8 supra) penetrating it up to the labia minora. Her father eventually succeeded in deflowering her (p. 6 TSN, July 27, 1994).

She did not notice any blood or bloodstains in her organ when she wiped herself dry. It could be because her father after raping her, douched her organ with water (p. 8, supra).

“She noticed her cycling pants (Exh. “A”) and her black panty (Exh. “B”) thrown at a corner of their house (p. 7, TSN, July 28, 1994). After her father succeeded in raping her, she kept silent because he made the threat to kill her mother first, and she the next, if she will report the incident (P. 10, supra). She remained in the house and continued to watch her younger sister (p. 18, supra). Then her father left the house around 4:00 o’clock in the afternoon, to follow her mother to the store (p. 9, TSN, Aug. 9, 1994).

“Mencina’s mother arrived home at 6:00 o’clock in the evening of the day of the incident but he did not reveal to her what transpired between her and her father (p. 10, TSN, July 25, 1994). The next day (May 24, 1994), she looked for means to go to her aunt and made the excuse of fetching water from a well. Instead, she went directly to her aunt’s house and there she tearfully revealed to her aunt, Paciencia Taneo – who resides also in Sitio Bihang, Borbon, Cebu, about half a kilometer from the house of Teofilo Taneo (pp. 10-11, supra) – that she was raped by her own father and requested her aunt to accompany her to the poblacion in order to report to the police the incident (p.10 TSN, July 27, 1994). At this juncture, Teofilo Taneo arrived and asked Pacencia Taneo why the slippers of Mencina was there (p. 11 supra). Upon seeing her daughter, he ordered her to go down. Teofilo Taneo then brought his daughter home after maltreating her (p. 11, TSN, July 25, 1994).

“Paciencia Taneo reported to a passing policeman, Expedito Urot, the incident reported to her earlier by Mencina Taneo (p. 11, TSN, July 27, 1994).

“Meanwhile, in the house of Teofilo Taneo, the latter continued maltreating his daughter. With bolo in his

hand, he told Mencina that it is better to kill her if she would report the incident to the authorities. He told her not to leave the house pp. 11-12, TSN, July 25, 1994).

“Later, Borbon policeman arrived who disarmed her father who was holding a bolo, and arrested him. Her father was brought to the Borbon Police Station where he was investigated and detained. She was also brought to the police station in a separate vehicle (p. 4, TSN, July 28, 1994).

“On May 24, 1994, Mencina was sent to the Danao General Hospital in Danao City accompanied by SPO3 Expedito Urot (p. 5, supra). There she was examined briefly by Dr. Gemma T. Macachor. She felt pain when her private parts were examined and saw extracted from it a whitish substance (pp. 13-14, TSN, July 24, 1994). She went home and executed an affidavit (Exh. “C”, Exh. “C-translation”) an signed a complaint (Exh. “D”) on May 25, 1994 – two days after the date of the incident. She was asked searching questions by Judge Perla C. Vilo, Judge of the 5th Municipal Circuit Court of Borbon-Tabogon, Cebu (Exh. “E”; pp. 14-16, supra).

“After the arraignment of her father Teofilo Taneo before this Court, she went home to her town in Borbon, Cebu, to deliver a subpoena to the police station thereat, to be served on SPO3 Expedito Urot of the Borbon Police Force. Later, she went home in Bihang, Borbon, Cebu, because her father was already detained, and there, her mother pleaded to her to pardon her father because the medical certificate issued after her examination did not show that she was raped. That her father will be freed because the doctor in Danao General Hospital was paid by Engracio Urot, brother-in-law of her father (p. 2-3 TSN, July 27, 1994).

“She stood pat in not forgiving her father, who also pleaded for forgiveness. She would rather choose to die than to pardon her father who ravished his own daughter. Besides, she fears that the same fate might befall on her younger sisters (pp. 5-6 supra).

“She felt very sad and could hardly sleep because of what her father did to her and leave it to the Court to award damages that she may be entitled to (supra).”[5]

Now to dispose of the assigned errors which appellant jointly discusses in his brief.

In his first assignment of error, appellant insist that private complainant’s allegations are “highly improbable”, “implausible”, and “utterly ridiculous”, hence unworthy of belief. Thus:

“She insists that during the sexual act, the right hand of her father had been used by him to manipulate his sex organ on her vagina. His left hand was allegedly used to pin her down in such a way that she could not anymore struggle against him. At the same instance, she also insists that her said attacker armed himself with a bolo which was invariably used to intimidate her into submission. Considering her narration, human conduct dictates that this factual situation is highly improbable. Face value, it is even implausible, if not utterly ridiculous. For how could the accused-appellant have been able to pin her down with his left hand if at the same time he was also armed with the bladed weapon? Obviously, he could not have held the bladed weapon in his right hand as it was purportedly used in the sexual act. Necessarily, therefore, the bladed weapon must have been on his left hand allegedly to be used on the complainant were he fail his carnal advances. Thus, unless it be shown that the accused appellant was such an adroit purveyor of his skills and sexual intimidation, we would opt to believe that the private complainant had altogether materially exaggerated on her testimony of the incident.”[6]

Appellant’s argument is not persuasive. His assertion is a dismal attempt to distort private complainant’s narration. For clarity, we quote hereunder the material testimony of private complainant supplying the portions which appellant omitted in his brief, thus:

“COURT: (TO WITNESS)

Your testimony may involve the revelation (sic) of facts which may embarrass you and the accused, do you want the public to be excluded in the trial in (sic) this case?

A

It's alright, I want the trial be publicly done.

COURT: (TO FISCAL BERCILES)

Alright, offer and cite the purpose

FISCAL BERCILES:

The purpose of this witness is to prove the fact that she was raped by her own father Teofilo Taneo on May 23, 1994, at 3:00 p.m. at their house situated at sitio Bihang, Bongoyan, Borbon, Cebu and the attendance (sic) circumstances thereto.

May it please this Honorable Court.

COURT:

Fiscal may proceed.”

xxx xxx xxx

“FISCAL BERCILES:

Q

Could you tell the Honorable Court if there was unusual incident that happened during the time you stated before this court that you were slept after your younger sister went to sleep at that precise moment?

A

Yes, ma’am.

Q

Could you tell the court what was the unusual incident?

A

Yes, ma’am

Q

Please tell the court what happened?

A

While I was sleeping, I was awakened by the pains and after that I noticed that my father was already on top of me and inserting his finger into my vagina.

Q

You stated that your father was inserting his finger into your vagina, will you please tell the court, is it left or right finger?

A

Right hand

Q

Why, what happened to the left hand of your father, what was he doing during that time.

A

He pinned me down with his left hand.

FISCAL BERCILES:

Q

When you stated you were pinned down by your father, what happened next?

A

After he inserted his finger, my father inserted his penis into my vagina.

COURT:

Q

Was there penetration?

A

Yes, Your Honor.

FISCAL BARCILES:

Q

What happened next?

A

I tried to free myself in order that he will not succeed in his evil desire but I was overpowered by him.

Q

And because you were overpowered by your father, what was your initial reaction?

A

I was helpless (sic) and my father succeeded to his carnal desire.

Q

Can you remember what you were wearing at that time before your father raped you?

A

Yes.

Q

What were you wearing?

A

I was wearing white t-shirt and cycling pants.

Q

What else did you wear aside from the cycling pants?

A

Black panty.

COURT:

Q

What what (sic) happened to your white t-shirt, cycling pants and black panty?

A

I have notced (sic) after awaken (sic) that my cycling pants and panty were removed and was thrown off at the corner of the house.

FISCAL BARCILES:

Q

And when you noticed for the first time you were naked, what if anything your father whom you describe on top of you, what was he wearing?

A

He was still wearing a white polo shirt with colar.

Q

How about his lower extremities, what was he wearing if he was wearing anything?

A

Brown

Q

At that time when your father was on top of you, what was he wearing?

A

He has no more pants.

COURT:

Q

You mean he was naked from waist down?

A

Yes, Your Honor.”

xxx xxx xxx

FISCAL BERCILES:

Q

Now, after your father raped you, what happened next?

A

I was just silent because according to him if I will tell my mother, he will kill my mother and after he will kill me also and then he will flee.

Q

When did your father (sic) threaten you with these words?

A

During the incident.”

xxx xxx xxx

“COURT:

Q

You said that you have (sic) fully aslept that afternoon of the date of the incident, what cause you to wake up from your sleep?

A

The pains.

Q

Pains where?

A

In my vagina.

Q

And what did you do when you fell (sic) the pain and woke up?

A

I tried to free myself from the carnal desire of my father but nevertheless he succeeded of what he wanted.

Q

How long did his penis stay inside your vagina?

A

He (sic) took him too long to remove it.

Q

Do you have any sexual experience before with the man?

A

There was none?

Q

Now, you are charging your father with a very serious offense, is it really your father who raped you in the afternoon of May 23, 1994?

A

Yes, Your Honor.” [7]

It is clear from the foregoing that private complainant was asleep during the commencement of the assault on her honor. She was forewarned thereby giving the appellant the chance initially to insert a finger of his right hand and subsequently his private part inside complainant’s private organ without difficulty. With the insertion of appellant’s private part, his right hand which he momentarily and initially used was obviously left unhindered and freed. Hence, contrary to appellant’s contention it was not impossible for him to hold the bolo with his right hand during the forced copulation. Private complainant’s testimony, therefore, is neither “highly improbable” nor “implausible” as what the appellant wants this Court to believe. Indeed, the physical disparity between the appellant and his victim which the trial court observed indicates with more reason why the appellant succeeded with ease in accomplishing his vile intent against his very own daughter. Thus:

“In the case at bar, the victim Mencina is a petite woman, a teenager, almost 5 feet tall; whereas, the accused is about 5’5” inches tall, and, as a carpenter, accustomed to manual labor, is quite strong. It is incredible that with his physical superiority, the accused-father was able to overcome the resistance of her daughter and to have forcible carnal knowledge of her.”[8]

Private complainant’s frail physique is obviously no match to appellant’s strong and superior physical built. Appellant’s pretension then that the prosecution is duty bound to show that “he was such an adroit purveyor of his skills at sexual intimidations” to buttress his conviction loses force in the face of the physical inequality between the concerned parties.

Moreover, the force or violence necessary in rape is naturally a relative term, depending not only on the age, size and strength of the parties but also on their relation to each other.[9] And considering that the assailant is no less than private complainant’s own father who wields parental influence over her person, the crime undoubtedly was consummated with facility.[10] The reason is that in a rape committed by a father against his own daughter, the former’s moral ascendancy over the latter substitutes for violence or intimidation.[11] Evidently, a woman of young age like the private complaint in the case at bench, can only cower in fear and yield into submission. Appellant’s imputation of implausibility, therefore, is more imagined than real.

Appellant stresses in his second assignment of error that Dra. Macachor, the attending physician who examined

private complainant a day after the sexual assault, found no “fresh hemenal lacerations, contusion or trauma on the other parts of [the victim’s] organ”.[12] He adds that the victim’s “vaginal orifice still ‘admits the forefinger’ which is a normal state for women who have had no sexual experience. This is, therefore, [appellant emphasizes], the exact implication of the whole testimony of Dra. Macachor: NO ABRASION, NO RAPE.”[13] At best the crime to which he should have been held liable, appellant suggests, is “for certain acts of lasciviousness”.[14]

The contention lacks merit. The medical certificate issued by Dra. Macachor reads as follows:

“SIR:

“I have the honor to inform you that Mencina Taneo a medico-legal case has been attended to in this hospital on May 24, 1994 @ 2:40 P.M.

Pertinent Finding: Body: No sign of violence; no abrasions, contusions or hematoma noted on the breast, anterior chest, perineum, upper & lower extremities. xxxxxxx

Labia Majora: No laceration;

Labia Minora: Slight redness noted in the posterior part of the labia minora; xxxxx

Fourchette: Slightly distended; xxxxxx

Hymen: Intact, no laceration or abrasion noted; xxxxx

Vaginal Orifice admits forefinger; xxxxxx

Vaginal smear: Negative xxxxx

xxx xxx xxx

Very respectfully yours,

Chief of Hospital

By: (Sgd.)

Gemma T. Macachor, M.D.

Medico-Legal Officer”[15]

While the findings show the absence of hymenal lacerations and private complainant’s vaginal orifice admitting barely a forefinger, these do not militate against the charge of rape. The doctor’s negative findings, we note, have been amply explained by the trial court in this wise:

“This Court gave significance to the claim of complainant that she was not thoroughly examined by Dr. Gemma T. Macachor but only briefly. The examining physician did not examine the other parts of the female organ to determine defloration or at least sexual contact with a male organ, such as, the condition of the vulva. Normally, the labia majora and minora are in close contact with one another covering almost completely the external genitalia. After sexual intercourse, the labia may gape exposing introitus vulvae. Also not considered in the examination is whether the normal V shape of the fourchette is lost on account of possible stretching

during the insertion of the male organ; there is no finding (perhaps due to failure of its examination) whether there is diminution of the sharpness or obliteration of the vaginal rugosities, to determine whether there was previous sexual contact. The medical examiner did not even care to ask for the clothings worn by Mencina Taneo at the time of the incident for laboratory examination, or at least for visual examination for signs of struggle.”[16]

It is unfortunate that counsel for appellant has made hasty accusation against the trial court for the above pronouncement as “taking a partial and biased position”[17] and having adopted “its own biased interpretation of the physical evidence.”[18] We do not find any cogent and valid ground in the records of this case which could justify such a grave imputation upon a member of the bench who merely performed his function and expressed his observation on the conduct of the examination. Counsel should be reminded of his duty to observe and maintain the respect due the courts of justice and judicial officers.[19] Arguments, written or oral, should be gracious to both the court and opposing counsel and be of such words as may be properly addressed by one gentleman to another.[20]

Another serious reason why the medical examination yielded negative result is the unrebutted testimony of the private complainant. Thus:

“Q:

Whom did you see in your residence?

A:

My mother Elisa Taneo and my younger sisters.

Q:

What, if any, did Elisa tell you at that precise moment when you visited your mother?

A:

My mother requested me to just pardon my father because he cannot be imprisoned because in the medical certificate there is no showing that I was raped.

Q:

What else did your mother tell you after she informed you that there is nothing in the medical certificate regarding the (note: the continuation of the question does not appear in the records)

A:

She further told me that my father will eventually be released from prison because the doctor was paid by Engracio in the amount of P1,000.00.

COURT:

Q:

Who is this Engracio?

A:

The wife of Engracio is the sister of my father.

Q:

Do you know the wife of Engracio?

A:

Leonila Urot.”[21]

With the trial court’s formidable observation and the victim’s un rebutted testimony, appellant’s reliance with the medical certificate, as well as the testimony of the doctor, assumes no significance.

In any event, appellant’s argument proceeds from a misconception that a medical certificate is an indispensable element in the prosecution for rape and runs roughshod over the well-settled rule that the absence of medical findings by a medico-legal officer does no disprove the occurrence of rape.[22] The fact that the medical certificate show no external signs of physical injuries and spermatozoa on the victim does not negate the commission of rape[23] for the slightness penetration of the labia consummates the offense.[24] The medical examination of the victim, as well as the medical certificate, is merely corroborative in character. What is important is that the testimony of private complainant about the incident is clear, unequivocal and credible. When a woman testifies that she has been raped, she says all that is needed to signify that the crime has been committed.[25] On this score, the trial court declared:

“The Court subjected the testimony of the offended girl with painstaking scrutiny, which was given in a straight-forward manner, and found it unimpaired by material discrepancies and contradictions and consistent with ordinary human experience. Her testimony undoubtedly bears the imprint of truth and, therefore, must be accepted.”[26]

Furthermore, private complainant’s firm resolve, quickness and spontaneity in devising a way to flee immediately after the day she was violated from the appellant’s clutches and in tearfully confiding her harrowing ordeal to her aunt speak well of the natural reaction of a virtuous and an aggrieved woman. Likewise, when she was given a choice whether to exclude the public during her trial, private complainant appeared resolute in testifying before an open court. Her conduct simply shows the fervent drive to place before the bar of justice her ruthless assailant. Our jurisprudential annals, in this connection, reveal that no woman, especially of tender age, as in this case, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to a public trial if she was not motivated solely by the desire to have the culprit apprehended and punished.[27] Verily, like the trial court we find no valid reason to doubt private complainant’s testimony which

bears the earmarks of truth. Besides, this Court accords due deference to the trial court's views on who should be given credence, since the latter is in a better position to assess the credibility of witnesses considering its opportunity to observe their demeanor, as well as their deportment and manner of testifying during trial.[28] To be sure, this rule is subject to some well defined exceptions[29] none of which, however, is attendant in this case.

Appellant claims in his third assessment of error that the trial court erred in not giving credence to his defenses of alibi and denial. Apart from this general averment, however, appellant did not elaborate why his defense should be accepted. Appellant thereafter trails his attack on the alleged erroneous shifting of the burden of proof from the prosecution to the defense. Thus:

“Lastly, it is beyond cavil that the prosecution has the onus probandi in establishing the guilt of the accused and the weakness of the defense does not relieve it of this responsibility. (People vs. Bacalzo, 195 SCRA 557; People vs. Lagnas, 222 SCRA 745) However, it appears that this is not so in the case at bar. The trial court, apparently taking a partial and biased position, appeared to have shifted the burden of proof on the defense when it took against the owner of the store where the Taneo ocuple went to get their supply of corn grits. In an unprecedented stance, the trial court substantially ‘deduced an unfavorable presumption’ against the accused-appellant for his supposed failure to present Ms. Mangubat as a defense witness. (Decision, p. 21). This is a clear violation of the rules on criminal procedure and evidence and should not therefore be countenanced, more so considering that this is a capital offense where the very life and limb of the accused-appellant is at stake. With due respect, it is thus our unqualified position that to unfairly deprive the accused-appellant of his life for an offense he never committed is too high a price to pay for judicial convenience. We therefore opt for his total acquittal of the offense charged. x x x” [30]

Bare denial cannot overcome the categorical testimony of the victim. It is well-settled that greater weight is given to the positive identification of the accused by the prosecution witnesses than to the accused's denial and explanation concerning the commission of the crime.[31] The trial court, in this light, appropriately said:

“xxx xxx xxx

“The denial of the accused is obviously a feebly contrived attempt to exculpate himself from any liability.

“Mencina categorically candidly, and without hesitation, positively identified his father as the perpetrator of the crime.

“The assertion of the accused that Mencina falsely charged him of the crime because he disallowed his daughter to work as househelper, is, to say the least, absurd.

“It is unthinkable and unbelievable for Mencina to expose herself to embarrassment by telling very intimate matters during a public trial and to destroy the future of the whole family, just to spite and get even with her father for a trivial reason. Besides, only a daughter who may have lost her senses would dare charge falsely her own father of committing a heinous crime of rape. Perhaps against a stranger.

“A woman does not go around flaunting her having been raped. There is no evidence presented to show that Mencina is so desperate and base that she would sacrifice her honor and that of her father just to satisfy a personal urge for a petty vengeance.

xxx xxx xxx

“The denial of the accused cannot prevail over the positive straight forward and candid testimony of the offended daughter. The categorical declarations of Mencina on the details of the crime are more credible than the denial interposed by the accused.”

Similarly, appellant's alibi that he was at the store one kilometer away from their house when the incident transpired cannot be taken seriously. The short distance and brief travel time between the store and appellant's

house did not foreclose the commission of the felony. It is a cardinal rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and it was physically impossible for him to have been at the scene of the crime.[32] So too, alibi cannot prevail over positive identification of the accused by the prosecution witness.[33] In this regard, we quote with approval the conclusions reached by the trial court in rejecting appellant's alibi. Thus:

"The alibi of the accused has to be rejected. Accused was positively identified by his victim. It has been repeatedly held, to the point of being trite, that alibi cannot prevail over the positive identification of the accused. Besides, the alibi appears dubious having been corroborated only by his wife, who testified that her husband, accused herein, accompanied her to the store to get the sack of corn grits but who contradicted herself when on cross-examination, she admitted that her husband did not accompany her but just followed her later to the store; thus, corroborating instead the testimony of her daughter that accused followed her mother to the store after raping her." [34]

The residual contention that "the trial court substantially 'deduced an unfavorable presumption' against the accused-appellant for his supposed failure to present Ms. Mangubat as a defense witness"[35] thereby shifting "the burden of proof on the defense"[36] is unworthy of serious consideration. Apparently, appellant based his observation from the following passage in the trial court's decision:

"No reason is given by the accused that Letecia Mangubat, the owner of the store, is not available as witness to prove his alibi. Said supposed uninterested witness had not been presented to testify for the accused. As unfavorable presumption may be deduced from the accused's failure to present her." [37]

Said paragraph is neither objectionable nor contrary to "the rules on criminal procedure and evidence." [38] The non-production of a corroborative witness, without any explanation given why he was not so produced, weakens the testimony of the witness who named that corroborating witness in his testimony.[39] Thus, appellant's notion that the burden of proof has been shifted on the defense is misplaced. What the trial court did is to merely express a valid observation why appellant's alibi, a weak defense, became manifestly inferior vis-à-vis the evidence for the prosecution. At any rate, the basis of conviction is not the non-production of Mrs. Mangubat but private complainant's credible and categorical testimony.

Finally, extant in the records is the testimony of appellant's wife to the effect that:

"Q:

In fact on May 23, 1994 just one word from your husband to go to the store made you afraid of your husband, is that correct?

A:

When I proceeded to the store I was accompanied by my husband.

Q:

Does it mean you went ahead to the store?

A:

Yes, I went ahead with my husband and after my arrival my husband arrived also.

Q:

When for the first time did you know that you are going to testify (sic) in the case?

A:

Just know.

Q:

In fact when the complainant filed a charge of rape in the MTC you were there because your husband was already put in jail, is that correct?

Q:

And in fact your husband sought your help to ask the complaint to forgive this serious crime that he is now being charged with?

A:

Yes, maam.

Q:

In fact you did not know anything of what transpired on May 23, 1994 between your husband and daughter, is that correct?

A:

No, ma'am."[40]

Appellant never disowned instructing his wife, his sole corroborating witness, to ask for the victim's forgiveness and the dropping of the case. Appellant was, therefore, a party to this ploy. In a similar situation, the Court interpreted such gesture as an admission of guilt. Hence:

"Moreover, any scintilla of doubt both as to the identification of the accused and as to his guilt was dissolved by the overtures of his parents, wife, children and sister-in-law on pleading for forgiveness from Gilda. The accused did not disown their acts, which were testified to his kumadre, Resurreccion Talub Quiocho, and Gilda herself. He chose not to deny their testimony. Finally, despite the unequivocal pronouncement by the trial court

that his guilt was strongly established by the acts of his parents, wife and relatives, who had gone to the house of the victim to ask her forgiveness and to seek a compromise,' the accused dared not assign the finding and conclusion as an error and his Appellant's Brief is conspicuously silent thereon. Indubitably then, the accused was a party to the decision to seek for forgiveness, or had prior knowledge of the plan to seek for it and consented to pursue it, or confirmed and ratified the act of his parents, wife, children and sister-in-law. A plea for forgiveness may be considered as analogous to an attempt to compromise. In criminal cases, except those involving quasi-offense (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received as evidence as an implied admission of guilt. No one would ask for forgiveness unless he had committed some wrong, for to forgive means to absolve, to pardon, to cease, to feel resentment against on account of wrong committed; give up claim to requital from or retribution upon (an offender). In *People v. Calimquim*, we stated:

The fact that appellant's mother sought for forgiveness for her son from Corazon's father is an indication of guilt. (See *People vs. Olmedillo*, L-42660 August 30, 1982, 116 SCRA 193)."[41]

We see no plausible reason why the foregoing principle may not be applied in the case at bench.

Prescinding from the foregoing discussion, appellant's last assignment of error has to be brushed aside as it has no leg to stand on.

We now come to the imposable penalty for the crime committed. Under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, death penalty shall be imposed if the crime of rape is committed where "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." [42] The imposition of the death penalty in such instance is mandatory. [43] In the case at bench, the victim at the commission of the offense on May 23, 1994, was exactly seventeen (17) years, eleven months (11) and seventeen (17) days old having been born on June 6, 1946, [44] and the offender is the victim's own father. Applying the law, we find that the trial court did not err in imposing upon the appellant the death sentence. The award of Fifty Thousand Pesos (P 50,000.00), imposed by the trial court as moral damages is proper, except that it should be denominated as an indemnity. The Twenty Five Thousand Pesos (P25,000.00) award for exemplary damages is appropriate and in line with established jurisprudence. [45]

WHEREFORE, the decision appealed from is hereby AFFIRMED.

Two Justices voted to impose upon the appellant the penalty of reclusion perpetua. In accordance with Section 25 of Republic Act No. 7659 amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Narvasa, C.J., Regalado, Davide Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Panganiban, and Martinez, JJ., concur.

[1] The Information reads as follows:

"The undersigned at the instance and upon a complaint filed by private offended party accuses TEOFILO TANEO, of the crime Rape, committed as follows:

"That on or about the 23rd day of May, 1994 at 3:00 in the afternoon, more or less, at Sitio Bihang, Bongoyan, Municipality of Borbon, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the

above-named accused, with deliberate intent, by means of force and intimidation, did them and there willfully and unlawfully and feloniously have carnal knowledge with MENCIA TANE0, daughter of accused against her will and consent.

“CONTRARY TO LAW.” (Records, p. 1)

[2] Presided by Hon. Celso M. Gimenez, Judge.

[3] Decision, p. 26; Rollo, p. 38.

[4] Brief for the Accused-Appellant, pp. 1-2 Rollo pp. 57-58.

[5] Brief for the Plaintiff-Appellee, pp. 3-10; Rollo, pp. 80-87; See also: Decision of the RTC, pp. 2-6; Rollo, pp. 86-90.

[6] Brief for Accused-Appellant, p. 15; Rollo, p. 71.

[7] TSN, July 25, 1994, pp. 2, 7, 8, 9, 10, 26.

[8] Decision, p. 16; Rollo, p. 28.

[9] People vs. Alcid, 135 SCRA 280, 291, citing 7 C.J.S. 475

[10] See: People v. Mabunga, 215 SCRA 694; People v. Molero, 144 SCRA 397.

[11] People v. Burce, G.R. No. 108604-10, March 7, 1997; People v. Caballes, 199 SCRA 152; People v. Lucas, 181 SCRA 316; People v. Erardo, 127 SCRA 250.

[12] Brief for the Accused-Appellant, p. 19; Rollo, p. 75.

[13] Id., p. 24; Rollo, p. 80

[14] Brief for the Accused-Appellant, p. 21; Rollo, p. 77.

[15] Records, p. 27.

[16] Decision, pp. 14-15; Rollo, pp. 26-27.

[17] Brief for Accused-Appellant, p. 26; Rollo, p. 82.

[18] Id., p. 11; Rollo, p. 67.

[19] Canon 11, Rule 11.04, Code of Professional Responsibility; Rheem of the Philippines v. Ferrer, 60 SCRA 234.

[20] Toledo v. Burgos, 168 SCRA 513.

[21] TSN, March 27, 1994, pp. 2-3.

[22] People v. Julian, et. al., G.R. No. 113692-93, April 4, 1997; People v. Catoltol, Sr., G.R. No. 122357, Nov. 28, 1996.

[23] People v. Alfonso, 153 SCRA 487; People v. Monteverde, 142 SCRA 668; People v. Dadaeg, 137 SCRA 500; People v. Bawit, 102 SCRA 797.

[24] People v. Lazaro, 249 SCRA 234; People v. Alfonso, 153 SCRA 487; People v. Hernandez, 49 Phil. 980; People v. Oscar, 48 Phil. 527;

[25] *People v. Catoltol, Sr.*, supra; *People v. Tan, Jr.*, G.R. No. 103134-40, November 20 1996; *People v. Rosare*, G.R. No. 118823, November 19, 1996; *People v. Soterol*, 140 SCRA 400;

[26] Decision, p. 20; Rollo, p. 32.

[27] *People v. Dado, et. al.*, 244 SCRA 655; *People v. Guibao*, 217 SCRA 64; *People v. Derpo*, 168 SCRA 447; *People v. Selfaison, et. al.*, 1 SCRA 235.

[28] *People v. Topaguen*, G.R. No. 116596-98, March 13, 1997; *Almeda v. Court of Appeals*, G.R. No. 120853, March 13, 1997; *People v. Herbierto, et. al.*, G.R. No. 103611, March 13, 1997; *People v. Quinao*, G.R. No. 108454, March 13, 1997; *People v. Navales, et. al.*, G.R. No. 112977, January 23, 1997; *People v. Alvarez, et. al.*, G.R. No. 117689, January 30, 1997; *People v. Obzunar*, G.R. No. 92153, December 16, 1996; *People v. Alimon*, G.R. No. 87758, June 28, 1996.

[29] See: *People v. Ganan, et. al.*, G.R. No. 119722, Dec. 2, 1996; *Olondriz, Jr. v. People*, 152 SCRA 65.

[30] Brief for Accused-Appellant, pp. 26-27; Rollo, pp. 82-83.

[31] *People v. De Mesa*, 188 SCRA 48; *People v. Canada*, 144 SCRA 121; *People v. Mostoles*, 124 SCRA 906.

[32] *People v. Barte*, 230 SCRA 401; *People v. Aninon*, 158 SCRA 701.

[33] *People v. Fernandez*, 239 SCRA 174; *People v. Saballe*, 239 SCRA 365; *People v. Jimenez*, 235 SCRA 322; *People v. Apa-ap, Jr.*, 235 SCRA 468;

[34] Decision, pp. 21-22; Rollo, pp. 104-105.

[35] Brief for the Accused-Appellant, p. 26, Rollo, p. 82.

[36] Id.

[37] Decision, p. 21; Rollo, p. 105

[38] Brief for the Accused-Appellant, p. 26; Rollo, p. 82.

[39] Regalado, 2 Remedial Law Compendium, 5th Rev. Ed., 1988, p. 556, citing *People v. Abonales, et. al.*, 60 O.G. 179.

[40] TSN, August 9, 1994, pp. 6-7.

[41] *People v. De Guzman*, G.R. No. 117217, December 2, 1996; See also: *People v. Malabago*, G.R. No. 115686, December 2, 1996.

[42] Republic Act No. 7659, Section 11.

[43] *People v. Echegaray*, G.R. No. 117472, February 7, 1997.

[44] Decision, p. 25; Rollo, p. 109; TSN, July 25, 1994, p. 16.

[45] See: *People v. Gaban*, G.R. No. 116716-18, September 30, 1996; *People v. Villanueva*, G.R. No. 112164-65, February 28, 1996; *People v. Matrimonio*, 215 SCRA 613.

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