

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DELFIN AYO Y ATO, ACCUSED-APPELLANT.

G.R. No. 123540. March 30, 1999

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PER CURIAM:

In a criminal complaint dated September 13, 1994, Delfin Ayo y Ato was accused by his common law wife Orfa P. Ayo of raping their own eight (8) year old daughter Sarah Mae Ayo. The complaint reads:

"The undersigned, mother of Sarah Mae Ayo, eight (8) years of age, hereby accuses the above-named accused, Delfin Ayo y Ato, of the crime of Rape under Article 335, as amended by R.A. No. 7659, committed as follows:

That sometime in May 1994, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the said accused, employing force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of Sarah Mae Ayo, an eight year old minor, his own blood-daughter.

Contrary to law."

Upon arraignment on November 4, 1995, the accused Delfin Ayo, assisted by counsel de oficio, pleaded "not guilty" to the crime charged.

The following summation of the evidence for the prosecution contained in the trial court's Decision of November 22, 1995 is adopted in both appellant's and appellee's briefs:

"Delfin Ayo and Orfa P. Ayo are common-law husband and wife. They have two children, namely, Sarah Mae Ayo, born on September 25, 1986, and Noel Ayo, born on November 15, 1992. (p. 15, t.s.n., Feb. 6, 1995)

The couple and their children live in Sirib, Calinan, Davao City in a 4-meter by 4-meter one-room hut (p. 8, t.s.n., April 3, 1995), totally bare of any household furnitures or fixtures except for a small table and a small altar. The accused works as a jeep dispatcher in the Poblacion of Calinan, about 11 kilometers away, while the mother works in a tomato plantation about 4 kilometers distant from their house. Both leaves early for work, leaving their two children, aged 8 and 2 to fend for themselves until their return from work later in the afternoon. (pp. 19-22, t.s.n., Feb. 6, 1995). According to the accused he would sometime leave them food and sometimes the children themselves would go to their neighbors to eat. (p. 8, t.s.n., April 3, 1995)

Sometime in May of 1994, Orfa Ayo arrived early. She prepared food for their supper. Accused arrived late in the evening. He was drunk. He went wild and threatened his family with a bolo, prompting Orfa Ayo to leave the house with her 2-year old son and hid in the vicinity. Sarah Mae Ayo was left in the house with her father. (pp. 16, 21, t.s.n., Feb. 6, 1995)

After a while, feeling apprehensive and uneasy Orfa Ayo returned to their house. She found the door closed and chained. (p. 20, t.s.n., Feb. 6, 1995) She peeped through the wall of their house which was made of bamboo slats. And there, revealed to her by the light of a lamp, was her daughter Sarah Mae Ayo, naked, on the floor beneath her own father, who was also naked, crying and pleading to him to: "Stop it, pa!," as the latter was having coitus with her.

Seeing the most damnable sight she would ever see in her lifetime Orfa Ayo shouted to the accused to open the door. The accused went out of the house and threatened her with a bolo, so she ran away. Later, she went back, and the two had a fight. (pp. 16-17, t.s.n., Feb. 6, 1995)

Orfa Ayo did not immediately report the incident to the authorities because of the threat of the accused. It was only in August of 1994 that she reported the incident to their barangay captain after Sarah Mae Ayo confided to her that her father molested her and after she noticed that there was blood coming from Sarah Mae's vagina when she moves her bowel and urinate. (p. 18, t.s.n., Feb. 6, 1995)

Sarah Mae Ayo herself, testifying with the simplicity of innocence pointed to her own father as the one who had sexual intercourse with her on several occasions. When asked how many times, she raised her ten little fingers to indicate the number of times she was ravished, and without hesitation pointed to her own father as the one who molested her. (p. 5, t.s.n., January 19, 1995)

She testified that she does not love her father because he is "bastos" and "manghilabot man siya" (he will touch me). When asked why, she answered, "He `iyot' me." (He made love to me). When asked when and for how many times, she said she could no longer remember but it was done "many times already." (pp. 3, 5, 7, 10, t.s.n., Jan. 19, 1995)

She testified that every time- her father makes love to her he will look for a piece of cloth with which to wipe something while, like mucus ("Puti, murag sip-on") coming from his penis, directing it to her vagina. She felt pain when her father's penis entered her vagina, with blood coming out during every intercourse. (pp. 3-8, t.s.n., Jan. 19, 1995)

Admitting no love for her father, she asked the Court that her father be sent to jail. (p. 6, t.s.n., Jan. 19, 1995)

Dr. Danilo Ledesma who examined the victim testified that he found no injury to the hymen, the hymen was intact, its orifice being only half a centimeter (0.5 cm) which was impossible for an average-sized male organ to penetrate without causing laceration. However, he did not discount the possibility that the labia had been touched "by the penis in going inside only, in a sliding motion, which will also include the thighs of the victim." (p. 4, t.s.n., Feb. 22, 1995). In his General Physical Findings in Living Case No. 99 (Exh. B) he concluded that: "1) No evident signs of extra-genital physical injuries noted on the body of the subject at the time of examination; and 2) Hymen, intact, and its orifice small 0.5 cm.) as to preclude complete penetration by an average-size adult male organ in erection without producing hymenal injury." [1]

The accused denied the charge against him. He testified that he had not molested nor touched her daughter, and denied having played with her genitals. He maintained that the testimonies of Sarah Mae and Orfa are all false, and that he did not know why his daughter and his common-law wife would testify falsely against him. [2]

Accused Delfin Ayo also presented two witnesses: Gerondia Sablas, and Ana Vilma Canoy, both neighbors. Gerondia Sablas testified that she has known the accused for more than five (5) years already, and that she knows the latter to be a good and law-abiding citizen, who has not quarreled with anyone in their place. She stated she could not believe that he raped his own daughter, opining that a parent cannot destroy the honor of his own daughter [3]. Ana Vilma Canoy, whose house is thirty (30) meters away from the house of the accused, testified that the accused was a close friend of her father, and that the accused is a good man with no bad record in the community. She stated that it was impossible for Delfin Ayo to have raped his daughter, and that he was charged because his wife Orfa had been unfaithful to him and is now living with a married man named "Apang" and is now pregnant. [4]

The trial court found the victim's testimony credible, although she was only eight (8) years old when she testified and is of low mental aptitude; it found the victim's answer to the questions concerning the commission of the rape "straightforward" and "leaving no doubt as to its occurrence." From the entirety of the testimonies of Sarah Mae

and her mother, the court said that the crime of statutory rape was proven and imposed the death penalty thus:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of statutory rape as penalized under Article 335 of the Revised Penal Code, as amended, he is hereby sentenced to suffer the supreme penalty of DEATH. His immediate incarceration at the National Bilibid Prison, pending the automatic review of this case, is hereby ordered.

The accused is further ordered to indemnify the offended party, Sarah Mae Ayo, as moral damages in the amount of P50,000.00.

Costs de officio."

The case is before us for automatic review.

The appellant submits the following assignment of errors in his brief:

"I

THE TRIAL COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES WHICH ARE UNRELIABLE, UNBELIABLE AND THEREFORE NOT SUFFICIENT TO SUSTAIN A CONVICTION BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT WHEN THE EVIDENCE ADDUCED BY THE PROSECUTION FAILED TO OVERCOME THE PRESUMPTION OF INNOCENCE IN HIS FAVOR BY CLEAR AND CONVINCING EVIDENCE OF GUILT BEYOND REASONABLE DOUBT."

The accused appellant points out certain flaws and inconsistencies in the evidence of the prosecution which the trial court allegedly overlooked and disregarded. Thus on direct examination Sarah Mae testified that her father was the one who had sexual intercourse with her on several occasions, raising her ten fingers to indicate the number of times she was sexually abused by her father; she stated that everytime her father made love to her, he would look for a piece of cloth with which to wipe something white like mucus ("puti, murag, sip-on") coming from his penis, directing it to her vagina; she felt pain when her father's penis entered her vagina, with blood coming out during every intercourse[5]. However, on cross-examination she admitted that when she says her father raped her, she means that her father was only playing with his penis and something white comes out and he directs the fluid into her vagina; she also admitted that the reason she did not love or like her father is that he always punched her when she is "maldita" and leaves the house to play in the neighbor's house. It is accused-appellant's theory that the victim did not understand the crime she filed against her father. The appellant did not rape his daughter but masturbated his organ only, and accused-appellant was able to demonstrate on re-direct examination how her father masturbated, i.e., with her left hand, "making closed fist and moved it up and down." [6]

Accused appellant also cites the testimony of the physician Dr. Danilo Ledesma that no physical injury was noted at the time he examined the victim; the hymen was intact and the orifice was only .5 cm. in diameter which was impossible for an average-sized male organ to penetrate without causing laceration,[7] and there was no damage in the labia, between the labia going to the anus, and the vestibule.[8] Accused-appellant asserts that the rape is a concoction of the victim's mother in order to send the accused to the gallows to enable her to live with her paramour, relationship with whom was the subject of the testimony of Ana Vilma Canoy. Finally, the accused-appellant claims that Orfa Ayo lied when she testified that sometime in May, 1994 she saw her daughter naked on the floor beneath her father, also naked, because she failed to report the incident immediately to the

authorities; if indeed the accused-appellant threatened her with a bolo, she would not have returned after a while and have a fight with the accused.

After a careful examination of the entire evidence, we affirm the finding that Delfin Ayo is guilty of raping his eight-year old daughter.

The trial court's assessment of the credibility of witnesses is entitled to great respect on appeal because it had the opportunity to observe the witnesses' demeanor and deportment on the witness stand.[9] It considered the following "clear-cut and spontaneous" answer of Sarah Mae as indicia of her truthfulness.

Q: Now Sarah, do you love your father?

A: No, Sir.

Q: Why do you say that you do not love your father?

A: Because "manghilabot siya." Because he is "bastos" (bastos man siya).

Q: Sarah, why do say that your father is bastos?

A: (NO ANSWER FROM WITNESS).

Q: Did your father do something to you very bad?

A: Yes, sir.

Q: Can you please tell us what he did to you which is bad?

A: Yes, sir.

Q: What was this thing which he did to you which is very bad?

A: He "iyot" me.

Q: Can you remember when your father made love to you or he "iyot" you?

A: No more.

Q: Can you remember whether it was in the evening or in the morning or in the afternoon when your father made love to you?

A: Morning and noon time.

Q: When your father make love to you, where was your mother?

A: She was working.

Q: When your father makes love to you, are you totally naked?

A: Yes, sir.

Q: Now, who will undress you?

A: My father.

Q: Now, where does he make love to you, in your room or any place in your house?

A: On the floor.

Q: What did you feel when your father made love to you?

A: I felt pain.

Q: How many times did your father make love to you?

A: Many times already.

Q: And, what happened to your vagina when your father makes love to you?

A: It was torn (nagisi)

Q: Now, do you know what is a rug? (noog).

A: Yes, sir.

Q: What is this rug all about?

A: It is a cloth.

Q: Can you tell us something about this noog?

A: It is a rug.

Q: What did you do about this noog?

A: For wiping.

Q: What has been wiped?

A: Something white which is like mucus. "Puti, murag sip-on."

Q: Who wiped this white thing you said look like sip-on?

A: My father.

Q: And your vagina, did it have this white thing which is like sip-on?

A: Yes, sir.

Q: Now, Sarah, can you please tell us where did this white thing looks like sip-on comes from?

A: From my father's penis (titi).

Q: Now, did you tell your mother that your father has been making love to you?

A: Yes, sir.

Q: Can you remember when you told your mother that your father is making love to you?

A: I cannot remember anymore.

Q: Sarah, did the penis of your father enter your vagina?

A: Yes, sir.

Q: And, how did you feel?

A: Pain.

Q: And, what did your father tell you after he makes love to you?

A: He told me not to tell my mother.

Q: Now, what if you will tell your mother about this - what will happen?

A: Because according to him, he will be jailed.

Q: Are you afraid of your father?

A: Yes, sir.

Q: Do you want your father to be back to your house?

A: No, sir.

Q: Why?

A: Because "manghilabot" (he will touch me).

Q: When your father makes love to you, does he kiss you?

A: No, sir.

Q: Does he kiss your vagina?

A: No, sir.

Q: Did he also touch your vagina?

A: No, sir.[10]

The trial court correctly opined that while there was no complete penetration, the penis of the accused did enter the labia of the victim and Sarah's hymen was not broken as the accused merely rubbed his penis up to the labia majora as the penis can be made to slide between the lips of the labia majora.

Dr. Danilo Ledesma, who conducted the physical examination on the person of Sarah Mae on September 12, 1994, testifying on his findings re "Living Case No. 99" which contained the following conclusions:

"1) No evident signs of extragenital physical injuries noted in the body of the subject at the time of examination.

2) Hymen, intact, and its orifice small (0.5 cm.) as to preclude complete penetration by an average-sized adult male organ in erection without producing hymenal injury.[11]

Dr. Ledesma stated in his testimony:

"Q: Can you please state for the record where is the labia majora located?

A: In plain language, the labia majora is the outer lip of the genital organ.

Q: And, the labia minora?

A: The labia minora is the inner lip situated beneath the labia majora.

Q: So, they are physically situated outside?

A: Yes, sir.

Q: And the hymen-where is the hymen located?

A: The hymen is the door on the covering entrance of the vaginal canal situated beneath the labia.

Q: More or less, the measurement or the distance of the labia from the hymen, can you please tell us?

A: About 1.5 cms. To 2 cms.

Q: So, the hymen is situated inner?

A: Yes, sir?

Q: In this particular case, as you said the hymen is intact, when you say there is no complete penetration, there is a possibility that the labias had been touched?

A: Yes, sir.

Q: The minora and the majora?

A: Yes, sir.

Q: Will it result to bleeding if the labia majora and the labia minora were touched by the Penis?

A: It depends because in this case, in my experience, usually the labia is just touched by the penis in going inside only, in a sliding motion, which will also include the thighs of the victim.

Q: So, under that situation, it will not cause any bleeding?

A: No, Your Honor, that is what we call inter-labia or between the two labias.

Q: So, under what circumstances would it result to bleeding?

A: If inserted inside the hymen because in my experience as the Medico Legal Officer, usually children at this age, especially those who are being molested by their father at an early age of about eight (8), usually they make it a point that the child, until she grows older and the hymenal opening is getting bigger, that is the time that they insert the penis.

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Q: Under what circumstances would a vagina bleed even if the hymen has not been touched or even if the penis has not touched the hymen or the vagina walls?

A: It will not bleed because the vagina is only a part of the genitalia.

Q: Alright, make your drawing.

A: Yes, Your Honor. (At this juncture, the witness is drawing the vagina). This is the genitalia of the wall facing the examiner. This is the labia majora, the outside portion. This is the labia minora. This is the clitoris, situated up. The opening here is the urethral opening, this is where the urine passes. This one is the hymen where the vagina is situated exteriorly. This is the vestibule. (Witness pointing). Sometimes this vestibule will have abrasion due to forcible intercourse.

Q: And it will cause bleeding?

A: Yes, Your Honor.

This is the fourchette. In the case of Sarah Mae Ayo, the hymen is only 0.5 cm. it is very small. If this is penetrated including this one here, the fourchette will also be lacerated and sometimes it will also reach the anus causing a communication between the anus and the vagina inside. In this case, it is impossible for the vagina to bleed.

Q: You said that there would be a bleeding if the vestibule is lacerated?

A: Yes, Your Honor.

Q: It will not happen in the case of Ayo that the vestibule will be lacerated - Why?

A: The most possible explanation is that the penis was only slid outside.

Q: But that enters the labia?

A: Like that only, Your Honor. (Witness demonstrating)

Q: This is the vagina, for example. What he did was for his penis to scrape into the labia?

A: Yes Your Honor.

Q: It reached the vestibule?

A: Sometimes, Your Honor.

Q: And that it was bleeding without necessarily hitting the hymen?

A: If it only slid the labia, it will not cause laceration in the vestibule.

Q: Not necessarily pushing into the hymen?

A: Yes, Your Honor."^[12]

The trial court accordingly found:

"In other words, the most reasonable explanation why the hymen of Sarah Mae Ayo was not broken was simply because the accused merely rubbed his penis between the labias, in what can probably be described as an inter-labial intercourse (p. 4, t.s.n., February 22, 1995). And this explains why, according to the victim, her father played with his penis or masturbated and "something white like "mucus" comes out from his organ directing it towards his vagina (p. 8, t.s.n., January 19, 1995), which evidently happened at the moment of ejaculation after the accused had rubbed his penis between the labias of the girl's private organ to the point of orgasm."^[13]

We find no cogent reason to disturb the findings of the trial court. It has been repeatedly held that when a woman claims that she was raped, she says in effect all that is necessary to show that rape has been committed; if her testimony meets the test of credibility, the accused can be convicted on the basis thereof.^[14] If she is not motivated by truth, no woman, much less an eight-year old girl, would subject herself to the rigors of a public trial, describing before total strangers the shameful, humiliating and degrading experience of the sexual assault.^[15]

While it may be granted that penetration may not have been accomplished as the girl's hymen was shown to have remained intact and the orifice too small to preclude full penetration, jurisprudence recognizes that slight penetration of the labia by the male organ still constitutes rape. It is sufficient that there be entrance of the male organ within the labia of the pudendum.^[16] Absence of hymenal laceration does not disprove sexual abuse especially when the victim is of tender age. Mere touching, no matter how slight, of the labia or lips of the female organ by the male genitalia, even without rupture or laceration of the hymen, is sufficient to consummate rape.^[17] Mere introduction of the male organ into the labia of the pudendum constitutes carnal knowledge.^[18]

Minor discrepancies in the testimony of the child Sarah Mae do not necessarily destroy her credibility.^[19] Testimonies of child victims are given full weight and credit^[20] as it is inconceivable that the child would make up stories against her father and admit that she was ravished if that was not true.^[21] The fact that Sarah Mae admitted during the cross-examination that she meant by rape that her father was merely playing with his penis, does not negate her testimony that her father had carnal knowledge of her. By her own testimony, Sarah Mae was

molested several times, although the accused-appellant was charged only for the rape that took place sometime in May 1994. Sarah Mae stated that her father does not "masturbate" but that her father plays with his penis; as noted by the prosecutor, the word "masturbate" was never used by the child.[22] Nowhere did Sarah Mae state that she meant that her father masturbated only when she was raped. She repeatedly and positively stated that "he `iyot' (intercourse) me" and that the head of her father's penis touched her vagina.[23]

The suggestion of accused-appellant in his brief that Sarah Mae did not understand the crime she charged her father with is probably not incorrect, as a child of such tender age would not likely know the legal implications of the act committed against her. What is clear to the Court is that the act committed by the accused against her daughter was consummated rape.

We are constrained to affirm the death penalty imposed by the court a quo.

Pursuant to Article 335 of the Revised Penal Code as amended by Section 11, R.A. 7659,[24] the death penalty shall be imposed if the crime of rape is committed with any of the following 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."

Four justices of the Court have continued to maintain the unconstitutionality of Republic Act. No. 7659 insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority to the effect that the law is unconstitutional and that the death penalty can be lawfully imposed in the case at bar.

Relative to the monetary liability of accused-appellant, the recent judicial prescription is that the indemnification for the victim shall be in the increased amount of P75,000.00 if the crime of rape is committed or effectively qualified by any if the circumstances under which the death penalty is authorized by the applicable amendatory laws. Applying the foregoing policy, the civil liability to be awarded to the offended party should be P75,000.00.[25]

In addition, the Court hereby orders accused-appellant to pay the amount of P50,000.00 as moral damages, also in accordance with prevailing jurisprudence.

WHEREFORE, the Court hereby affirms the appealed decision sentencing the accused-appellant Delfin Ayo to the supreme penalty of death, to pay the victim Sarah Mae Ayo the sum of P75,000.00 as civil indemnity and P50,000.00 as moral damages.

Upon the finality of this decision, let certified true copies thereof, as well as the records of this case be, forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur

[1] Rollo, pp. 13-15.

[2] Tsn., April 3, 1995, pp. 2-17.

[3] Tsn., August 22, 1995, pp. 2-6.

[4] Tsn., October 5, 1995, pp. 2-6.

- [5] Tsn., January 19, 1995, pp. 3-8.
- [6] Tsn., January, 19, 1995, pp. 9-10.
- [7] Tsn., February 22, 1995, p. 3.
- [8] Tsn., February 22, 1995, p. 8.
- [9] People vs. Ramirez, 266 SCRA 335; People vs. Corea, 269 SCRA 76; People vs. Antipona, 274 SCRA 328; People vs. Tadulan, 271 SCRA 233.
- [10] Tsn., January 19, 1995, pp. 3-4.
- [11] Exh. "B"; Exh. "1".
- [12] Tsn., February 22, 1995, pp. 3-4; 7-8.
- [13] Rollo, p. 20.
- [14] People vs. Malabago, 271 SCRA 464; People vs. Butron, 272 SCRA 352; People vs. Perez, 270 SCRA 526; People vs. Roncial, 272 SCRA 242.
- [15] People vs. Oliva, 282 SCRA 470.
- [16] People vs. Velasco, 73 SCRA 574; People vs. Borja, 267 SCRA 370.
- [17] People vs. Oliva, Supra.
- [18] People vs. de la Pena, 276 SCRA 558.
- [19] People vs. Dado, 244 SCRA 655; People vs. Cura, 240 SCRA 234.
- [20] People vs. Digno, Jr. 250 SCRA 237.
- [21] People vs. Guibao, 217 SCRA 64; People vs. Magpayao, 226 SCRA 13, People vs. de la Cruz, 224 SCRA 506; People vs. Joya, 227 SCRA 9.
- [22] Tsn., January 19, 1995, p. 9.
- [23] Tsn., Janaury 19, 1995, at pp. 4-10.
- [24] R.A. No. 8353 "The Anti-Rape Law of 1997" was not yet effective at the time the crime was committed.
- [25] People vs. Prades, G.R. No. 127569, 30 July 1998, People vs. Norberto Lopez, G.R. No. 129397, February 8, 1999.

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