

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOERAL GALLEN0, ACCUSED-APPELLANT.

G.R. No. 123546. July 02, 1998

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PER CURIAM:

What could be more compelling than deciding a case which involves the sexual abuse of a five-year old child? Equally important is the fact that the case before us involves the highest penalty imposable by law. Being the guardian of the most fundamental liberties of every citizen, the Court must pass upon every intricate detail of the case at bar to determine whether or not accused-appellant committed the gruesome act imputed against him.

Accused-appellant Joeral Galleno seeks reversal of the judgment of Branch 14 of the Regional Trial Court of the 6th Judicial Region stationed in Roxas City, relying on the defense of denial. Since the case involves the death penalty, the matter has been elevated to this Court for automatic review.

Accused-appellant was charged in an Information docketed as Criminal Case No. C-4629 for the crime of Statutory Rape, reading as follows:

The undersigned Assistant Provincial Prosecutor, upon prior authority and approval of the Provincial Prosecutor, and the original complaint filed by the guardian of the offended party, accuses Joeral Galleno of the crime of STATUTORY RAPE, committed as follows:

That on or about 5:00 o'clock in the afternoon of August 16, 1994, at Brgy. Balighot, Maayon, Capiz, and within the jurisdiction of this Court, the said accused did, then and there, wilfully and feloniously, and without the permission of anyone, enter the house of EVELYN OBLIGAR, a five-year old child, and succeeded in having carnal knowledge of her thereby inflicting upon the latter a vaginal laceration which caused continuous bleeding and her admission of five (5) days at the Roxas Memorial Hospital.

CONTRARY TO LAW.

(p. 9, Rollo.)

Accused-appellant entered a plea of not guilty. Thereafter, trial on the merits ensued, resulting in a judgment of conviction, the dispositive portion of which reads:

IN THE LIGHT OF THE FOREGOING ESTABLISHED FACTS, the Court finds accused JOERAL GALLEN0 GUILTY beyond reasonable doubt under Section 11 of Republic Act No. 7659 amending Article 335 of the Revised Penal Code.

Accordingly, accused JOERAL GALLEN0 is sentenced to suffer the supreme penalty of DEATH and to indemnify the victim Evelyn Obligar Garganera the sum of FIFTY THOUSAND (P50,000.00) PESOS.

Let this DECISION serve as clear signal warning the perverts, the misguided elements of our society, especially their lackadaisical parents in their innate moral obligation and responsibility in educating their children that in this corner of the world the wheels of justice is not asleep and its unforgiving hands and watchful eyes are as vigilant as ever.

(pp. 44-45, Rollo.)

In flashback, let us visualize the events.

Evelyn Obligar Garganera is the 5-year old daughter of Rosita Obligar Garganera who had to leave the province to find work in Manila after separating from her husband. Evelyn, together with her younger brother, 3-year old Eleazar, was thus left under the care and custody of their uncle, Emetario Obligar, and aunt, Penicola Obligar.

Less than kilometer away from their place of residence lived accused-appellant, 19-year old Joeral Galleno, known well Evelyn's family due to his frequent visits at the Obligars' abode as he was paying court to Emetario's eldest child, Gina.

On August 16, 1994, Emetario and Penicola left their residence to work at sugarcane plantation owned by Magdalena Dasibar. Their three children had all earlier left for school. The only persons left in the house were niece Evelyn and nephew Eleazar.

At around 4 o'clock in the afternoon, accused-appellant was on his way to his Lola Esing to have his pants tailored. Since it was drizzling, he passed by the Obligars' residence and found the two children left to themselves. The prosecution and the defense presented conflicting versions on what occurred at said residence. However, the result is undisputed. Evelyn sustained a laceration in her vagina which result in profuse, and to our mind, life-threatening bleeding due to her tender age.

The prosecution's version of what took place at the Obligars' residence is based on the testimony of Evelyn herself, her uncle Emetario, and the doctors who examined and treated her. The Solicitor General summarized the same in this wise:

2. Appellant took advantage of the situation by sexually molesting Evelyn. After lowering her shorts, he made Evelyn sit on his lap, facing him. As Evelyn was only five-years old while appellant was fully-grown man, the penetration caused the child's vagina to bleed, making her cry in pain. (pp.10-11 and 18-25, tsn, Garganera, January 10, 1995).

3. Appellant tried to stop the bleeding by applying, with his finger, the sap of "madre de cacao" leaves on her vagina. Unsuccessful in his attempt, he left Evelyn grimacing and crying in pain. (pp. 14-15, tsn Garganera, January 10, 1995; pp. 6-7, tsn, Obligar, February 7, 1995).

4. Shortly, Emetario and Penicola came home from work. The spouses were laborers in a sugarcane plantation about two kilometers away from their house. They arrived to find Evelyn crying. Emetario noticed that there was blood in Evelyn's dress and she was pressing a rug against her genital organ. (pp. 11-12, tsn, Obligar, January 10, 1995; pp. 8-9, tsn, Obligar, February 7, 1995).

5. Emetario asked Evelyn what happened but she did not answer. Emetario spread the child's legs and saw that her vagina had been lacerated and blood was oozing therefrom. He summoned a "quack" doctor who applied herbal medicine on Evelyn's vagina but did not stop the bleeding. (pp.12-14, tsn, Obligar, January 12, 1995).

6. The following day, August 17, 1994, Emetario brought Evelyn to the clinic of Dr. Alfonso D. Orosco, the Rural Health Physician of Maayon, Capiz. Dr. Orosco reported, upon examining Evelyn, that he found (1) clotted blood, about 1 centimeter in diameter, in her vaginal opening, and (2) a vaginal laceration, measuring 1.0 centimeter x 0.5 centimeter, between the 3:00 o'clock and 6:00 o'clock position. He also affirmed that Evelyn's vaginal laceration could have been by blunt instrument inserted into the vagina, that it was possible that a human penis in full erection had been forcibly inserted into her vagina, and that a human penis in full erection is considered a blunt instrument (pp. 4-7, tsn, Orosco, November 28, 1994; p. 14, tsn, Obligar, January 12, 1995).

7. While he was examining Evelyn, Dr. Orosco asked Evelyn what caused her injuries. The child told him that a penis was inserted into her vagina and that its insertion caused her pain. (pp. 9-10, 14 and 18-19, tsn, Orosco, November 28, 1994).

8. Since his clinic lacked the proper medical facilities needed to treat Evelyn, Dr. Orosco, after dressing the victim's wound which continued to bleed, advised Emeterio and Penicola to bring the child to the hospital for further medical treatment. (p.8, tsn, Orosco, November 28, 1994; pp. 14-16, tsn, Obligar, January 12, 1995)

9. On August 18, 1994, Emeterio brought Evelyn to the Roxas Memorial General Hospital where she was examined by resident physician Dr. Ma. Lourdes Lañada. Dr. Lañada, upon examining Evelyn found that "there was a 3 cm. lacerated wound at the left anterior one-third of the vagina" and "the presence of about 10-15cc of blood" at the vaginal vault. Dr. Lañada recommended that Evelyn be admitted for confinement in the hospital because the wound in her vagina, which was bleeding, had to be repaired. Due to financial constraints, Evelyn was not admitted into the Hospital that day and went home with Emeterio to Barangay Balighot. (pp.6-8,tsn Lañada, January 4, 1995; pp. 15-16, ts, Obligar, January 12, 1995).

10. Upon her examination of the victim on August 18, 1994, Dr. Lañada opined that "a lot of things will cause the lacerated wound in the vagina." (p. 9, tsn, Lañada, January 4, 1995). According to Dr. Lañada, the vaginal laceration may be caused (1) by trauma to the area, when a girl falls and hits her genital area on a blunt instrument; (2) by medical instrumentation, like the insertion of a speculum into the vagina; or (3) by the insertion of blunt foreign object into the vagina, like a finger or a penis of a man in full erection. (pp. 8-9, tsn, Lañada, January 4, 1995).

11. On August 19, 1994, Emeterio brought Evelyn back to the Roxas Memorial General Hospital where she was attended to by Dr. Machael Toledo, the resident physician on duty, who found blood clots and minimal bleeding in the genital area. Dr. Toledo " ... pack(ed) the area to prevent further bleeding and (he) ... admitted the patient for possible repair of the laceration and blood transfusion because she has anaemia 2ndary to bleeding." Two hundred fifty five (255) cc of blood was transfused to Evelyn and she was given antibiotics to prevent infection. However, she was no longer operated on because the laceration had healed. Five days later, Evelyn was discharged and sent home with medication. (pp. 11-13, 17 and 26, tsn, Toledo, December 2, 1994).

12. Upon his examination of Evelyn on August 19, 1994, Dr. Toledo disclosed that the child suffered severe compound laceration which could have been caused by a normal and fully developed penis of a man in a state of erection that was forcibly inserted into her vagina and that the insertion caused her vagina to hemorrhage which thus required the transfusion of 255 cc of blood (pp. 14-16 and 26, tsn, Toledo, December 2, 1994).

13. Prior to her confinement in the Roxas Memorial General Hospital on August 19, Emeterio and Penicola Obligar brought Evelyn to the Maayon Police Station on August 18, 1994, where they reported the crime to SPO1 Paulino Durana. That same day, appellant was apprehended in a house near the Balighot Elementary School and brought to the police station (pp.17-19, tsn, Obligar, January 12, 1995; pp. 5-9, 16-17 and 21, tsn, Durana, January 16, 1995).

(pp. 164-171, Rollo.)

Denial is presented as the defenses. Accused-appellant testified that when he arrived at the Obligar residence that afternoon of August 16, 1994, he found the two children, Evelyn and Eleazar (also referred to in the record as Pilfo). While seated at the balcony, accused-appellant was approached by Evelyn, who knew him (tsn, April 5, 1995, pp.5 and 8). He cajoled her by throwing her up and down, his right hand holding the child and his left hand covering her vagina (Ibid., p. 21). Upon lifting up the child the first time, his left ring finger was accidentally inserted into the vagina of child since his fingernail was long and the child was not wearing any underwear. Consequently, Evelyn began to cry because her vagina started to bleed. Upon seeing this, he immediately went down the house and got some bark or leaves of madre de cacao tree and applied the sap on the child's wound. The

bleeding ceased and Evelyn stopped crying. Thereafter, accused-appellant went home. (Ibid., pp.9-10).

Accused-appellant further testified that on August 18, 1994, at around 9 o'clock in the morning, he was arrested. On the same day, Emeterio Obligar asked him to admit the offense so that he could be released the next day, but accused-appellant did not do so (Ibid., pp. 26-27).

Accused-appellant's father Raul Galleno was called to the witness stand and he testified that he learned about the arrest of his son on August 18, 1994 (tsn, May 12, 1995, p.6). The following day, he went to the house of the Obligars to ask Evelyn what happened to her. The child allegedly answered that a finger was accidentally inserted into her genital organ, but that Penicola who was then present, butted into the conversation and told Raul Galleno that the penis of accused-appellant was likewise inserted (Ibid., p.8).

The trial court did not accord credence to the version of the defense, pointing out in its decision that accused-appellant's defense of denial hinged on the argument that the statement of Evelyn as to how she sustained her vaginal laceration was mere concoction and a plain distortion of facts by her guardian. The trial court called this a "desperate attempt of the defense to becloud the charge of rape."

The trial court believed and accepted the testimony of Police Officer Paulino Durana that during the interrogation of Evelyn which he conducted at the PNP Station of Maayon, Emeterio and Penicola Obligar did not interfere with the responses of Evelyn, although, true enough, it was difficult to obtain answer from her because of her tender age.

The trial deemed the following circumstances significant in finding accused-appellant culpable:

1. Accused-appellant failed to explain how his left finger accidentally came in contact with Evelyn's vagina, while in the process of throwing her up and down. Besides, the prosecution was able to establish that Evelyn was wearing shorts. And assuming for the sake of argument that Evelyn was not wearing any pants or underwear at that time, accused-appellant failed to explain how his finger could possibly penetrate the victim's vagina by about one-fourth of an inch (p. 23, tsn, April 5, 1995).
2. After satisfying his lust, accused-appellant left the victim with her 3-year old brother, in pain and bleeding.
3. Evelyn's statement given to Dr. Ma. Lourdes Lañada, the physician who examined her at the Roxas Memorial General Hospital, that it was accused-appellant's finger which injured her, was a consequence of the victim's confusion.
4. The formal offer of settlement made by accused-appellant's father Raul Galleno militates against the cause of the defense.

Hence, the instant appeal and review, with accused-appellant assigning the following errors:

THE TRIAL COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE MEDICAL DOCTORS WHEN THE SAME FAILED TO CONCLUSIVELY AND SUFFICIENTLY ESTABLISH THE CAUSE OF THE LACERATION IN THE OFFENDED PARTY'S VAGINA

THE TRIAL COURT SHOWED MANIFEST BIAS THEREBY DEPRIVING THE ACCUSED-APPELLANT TO A FAIR AND IMPARTIAL TRIAL AND DISREGARDED THE RIGHT OF THE ACCUSED TO BE PRESUMED INNOCENT, WHEN HE ACTIVELY PARTICIPATED IN THE CROSS EXAMINATION OF THE ACCUSED

THE TRIAL COURT ERRED IN NOT DECLARING THE WARRANTLESS ARREST OF THE ACCUSED AS UNJUSTIFIED

THE TRIAL COURT ERRED IN INTERPRETING THE FINANCIAL ASSISTANCE EXTENDED BY THE PARENTS OF THE ACCUSED TO THE OFFENDED PARTY AS AN IMPLIED ADMISSION OF GUILT

(pp. 81-82, Rollo.)

One can not escape the feeling of utmost compassion for any rape victim, and more especially so for a 5-year old statutory rape victim. However, in our consideration of the matter before us, we set aside emotion and observe impartiality and coldness in drawing conclusions.

Under the first assigned error, accused-appellant contends that the testimony of the three expert witnesses presented by the prosecution, namely, Dr. Alfonso Orosco, Dr. Ma. Lourdes Lañada, and Dr. Machael Toledo, which convinced the trial court that rape was committed against the offended party, is not impeccable considering that they found that there was no presence of spermatozoa, and that they were not sure as to what caused the laceration in the victim's vagina; that Dr. Lañada herself testified that Evelyn told her that it was the finger of accused-appellant which caused the laceration. In addition, accused-appellant banks on the victim's testimony on cross-examination, that it was the finger of accused-appellant which caused the laceration; and that she even disclosed this to accused-appellant's father, Raul Galleno.

We are not persuaded.

As a general rule, witnesses must state facts and not draw conclusions or give opinions. It is the court's duty to draw conclusions from the evidence and form opinions upon the facts proved (Francisco, Pleadings and Trial Practice, Vol. I. 1989 ed., pp. 889-890). However, conclusions and opinions of witnesses are received in many cases, and are not confined to expert testimony, based on the principle that either because of the special skill or expert knowledge of the witness, or because of the nature of the subject matter under observation, or for other reasons, the testimony will aid the court in reaching a judgment. (Ibid., p.886).

In the case at bar, the trial court arrived at its conclusions not only with the aid of the expert testimony of doctors who gave their opinions as to the possible cause of the victim's laceration, but also the testimony of the other prosecution witness, especially the victim herself. In other words, the trial court did not rely solely on the testimony of the expert witnesses. Such expert testimony merely aided the trial court in the exercise of its judgment on the facts. Hence, the fact that the experts enumerated various possible causes of the victim's laceration does not mean the trial court's interference is wrong.

The absence of spermatozoa in the victim's vagina does not negate the conclusion that it was his penis which was inserted in the victim's vagina (People vs. Cañada, 253 SCRA 277 [1996]). In rape, the important consideration is not the emission of semen but the penetration of the female genitalia by the male organ (People vs. Dadles, 254 SCRA 696 [1996]). Verily, it is entirely probable that climax on the part of accused-appellant was not reached due to the cries of pain of the victim and the profuse bleeding of her vagina.

As regards the inconsistencies in Evelyn's declaration, particularly as to what really caused the laceration, we are convinced that the child, due to her tender age, was just confused. This is best exemplified by the testimony of Dr. Lourdes Lañada on cross-examination, as follows:

Q

Now, Doctor, at the time that you conducted your examination, you were aware that this child was only five years old?

A

Yes, sir.

Q

And at that tender age, Doctor, is it possible that the child may not know the difference of distinction between fingers of the hands and a finger protruding between the legs of a person?

A

Yes, sir, it is possible.

Q

So that is possible, Doctor, that the child may have referred to a finger that is between the legs?

WITNESS

You mean the penis?

PROSECUTOR OBIENDA

Yes.

WITNESS

It is possible.

(TSN, p.27, March 30, 1995.)

Of vital consideration and importance too is the unreliability, if not the outright incredulity of the version of accused-appellant which is not in accord with ordinary human experience. We thus can not help expressing sentiments similar of those of the trial court when is said:

The contention of accused Joeral Galleno raises serious doubts to his credibility. He failed to explain how his ring finger accidentally came in contact with the genitalia of Evelyn, while it was established by the prosecution that at that time Evelyn was wearing shorts. Even assuming "ex gratia argumente" that Evelyn was pantyless, how could it be possible for his finger to penetrate to the vagina for about one-fourth of an inch ... when she was in shorts. The Supreme Court, in *People vs. Fulgencio Baquiran*, 20 SCRA 451, (held that) evidence, to be believed must not only proceed from the mouth of a credible witness, but it must be credible in itself. Human perception can be warped by the impact of events and testimony colored by the unconscious workings of the mind. No better test has yet been found to measure the value of a witness' testimony than its conformity to the knowledge and common experience of mankind.

(pp.42-43, Rollo.)

Section 4, Rule 128 of the Rules of Court provides that "(e)vidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence." This simply means that relevancy is determinable by the rules of logic and human experience (Regalado, Remedial Law Compendium, Vol. II, 1988 ed., p.434). There is no precise and universal test of relevancy provided by law. However, the determination of whether particular evidence is relevant rests largely at the discretion of the court, which must be exercised according to the teachings of logic and everyday experience (Sibal and Salazar, Compendium on Evidence, 1995 ed., citing *Alfred Asmore Pope Foundation vs. New York*, 138 A. 444, 106 Conn. 432).

There is no explanation how the left ring finger (allegedly with long fingernail) of accused-appellant penetrated the victim's vagina by a depth of one fourth of an inch. Admittedly, accused-appellant's right hand held the child while his left hand supposedly held her in the vagina area. Why would he hold the child's vagina if his only intention was to frolic and kid around with her?

Accused-appellant likewise failed to explain why after injuring Evelyn (and after applying to the wound the sap of madre de cacao), he left her in the company of an even younger child, the victim's 3-year old brother. He did not even make an effort to immediately inform Emeterio and Penicola of what happened. Instead, he went home and kept mum about the incident.

Accused-appellant also said that after the alleged accident, before going home, he removed Eleazar's shorts and put them on Evelyn. Assuming this to be true, this only shows that the child was still bleeding. Why then would he leave the child considering that there was no adult to attend her? Significantly, his act of immediately leaving the place, when considered in the light of the other evidence, reflects his fear because of what he had done. The proverb "the wicked fleeth even when no man pursueth, but the innocent are as bold as a lion" was correctly adopted by the trial court in drawing its conclusions.

All of these loopholes are palpable and manifest, and clearly work against the credibility of accused-appellant's story on which his defense is based.

Besides, the trial court's conclusions finds supports in the testimony of accused-appellant's own witness, Dr. Lourdes Lañada (who was earlier presented during the trial as a prosecution witness), who testified that a laceration is caused by a blunt instrument and that a fingernail is not a blunt but a sharp instrument (TSN, pp.32-33, March 30, 1995).

As regards accused-appellant's argument that the victim's testimony is just a concocted story of what really happened, we apply the rule that the revelation of an innocent child whose chastity was abused deserves full credence (People vs. Cagto, 253 SCRA 455 [1996]). We likewise consider the fact that her uncle and aunt, virtually her foster parents, themselves support her story of rape. It is unnatural for a parent to use her offspring as an engine of malice, especially if it will subject a daughter to embarrassment and even stigma (People vs. Dones, supra.)

Accused-appellant's father, Raul Galleno, tried to destroy the credibility of Evelyn when he took the stand and testified that the child disclosed to him that is was accused-appellant's finger which was inserted into her vagina. Nevertheless, this testimony cannot prevail over the testimony of the victim, to wit:

FISCAL OBIENDA

Q

You said that Joeral Galleno the accused in this case hurt you while you were in the farm, can you tell in the farm, can you tell the Honorable Court which part of your body was hurt by Joeral Galleno?

A

(Witness pointing to her vagina) Here.

Q

When you said you were hurt did you bleed?

WITNESS

A

Yes, Sir.

FISCAL OBIENDA

Q

What was used by Joeral Galleno in hurting your sexual organ

A

His (Pitoy). Penis.

COURT

Make the translation of "Pitoy" into Penis. Do you agree that the translation of Pitoy is Penis in English?

ATTY. DISTURA

Agreeable, Your Honor.

FISCAL OBIENDA

Q

What did Joeral Galleno do with his Pitoy (Penis) to your vagina (Putay)?

A

It was inserted (ginsulod) to my vagina (Putay).

Q

When Joeral Galleno inserted his penis (Pitoy) to your vagina (Putay), that was the reason why it bleed?

A

Yes, sir.

Q

And it was very painful?

A

Yes, Sir

Q

And you cried because of pain?

A

Yes, Sir.

FISCAL OBIENDA

Q

And you were brought to the Doctor and admitted to the hospital because of that?

A

Yes, Sir.

(TSN, pp.10-12, January 10, 1995)

Under the second assigned error, accused-appellant alleges that he was deprived of a fair and impartial trial since

the trial court showed bias by discounting his testimony, and by actually participating in the cross-examination of accused-appellant.

We recently pronounced in *People vs. Malabago* (265 SCRA 198 [1996]) that a judge may not properly intervene in the presentation of evidence to expedite and prevent unnecessary waste of time and clarify obscure and incomplete details after the witness was given direct testimony cannot be assailed as a specie of bias.

Of course, we are aware of Rule 3.06 of the Code of Judicial Conduct provides:

While a judge may, to promote justice, prevent waste of time or clear up some obscurity, properly intervene in the presentation of evidence during the trial, it should always be borne in mind that undue interference may prevent the proper presentation of the cause or the ascertainment of truth.

And there is undoubtedly undue interference if the judge extensively propounds question to the witness which will have the effect of or will tend to build or bolster the case for one of the parties. We have, however, carefully examined the record and transcript of stenographic notes of the instant case. The trial court judge, the Honorable Salvador S. Gubaton, did not to build the case for one of the parties. For instance, accused-appellant, in his brief, refers to the questions propounded by the trial court on his of cajoling the child. A perusal of the line of questioning referred to hardly shows bias on the part of the trial court, but pure clarification.

In the third assigned error, accused-appellant questions the validity of his arrest.

It is settled jurisprudence that any objection involving a warrant of arrest or procedure in the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea, otherwise the objection is deemed waived (*People vs. Lopez, Jr.*, 245 SCRA 95[1995]). An accused should question the validity of his arrest before he enters his plea in the trial court (*Filoteo, Jr. vs. Sandiganbayan*, 263 SCRA 222 [1996]). He is estopped from questioning any defect in the manner of his arrest if he fails to move for the quashing of the information before the trial court (*People vs. Compil*, 244 SCRA 135 [1995]) or if he voluntarily submits himself to the jurisdiction of the court by entering a plea and by participating in the trial (*People vs. De Guzman*, 224 SCRA 93 [1993]; *People vs. Lopez, Jr.*, *supra*).

It does not appear in the record that accused-appellants raised this matter before entering his plea of "not guilty" to the charge (pp. 63 & 67, Record). Further, this issue was not even touched during the trial.

Lastly, accused-appellant, in his fourth assigned error, argues that the trial court misinterpreted the financial assistance extended by his parents as an attempt to settle the case. Accused-appellant even banks on the alleged close relationship between Emeterio Obligar and Raul Galleno as compadres, and the fact that Emeterio borrowed forty pesos from Raul Galleno, despite the fact that Emeterio already knew that accused-appellant caused the laceration in Evelyn's vagina.

Accused-appellant also draws attention to two incidents involving alleged financial assistance extended by Raul Galleno to the spouses Emeterio and Penicola Obligar. First, Emeterio Obligar, whom Raul Galleno said is his compadre, borrowed P40.00 for fare going Roxas City where Evelyn was confined. Second, on August 20, 1994, Raul Galleno and his wife and one of the brothers of Penicola Obligar went to Roxas Memorial General Hospital. There he gave P400.00 financial assistance to Penicola Obligar. Raul Galleno later admitted that the sum of P440.00 was returned to him by the spouses. Accused-appellant insists that these offers of financial assistance were not attempts at an amicable settlement but were prompted out of a sincere desire on the part of Raul Galleno to help the offended party.

We find no merit in the above-stated argument. It may be inferred that Raul Galleno wanted to settle the case by offering an amount to the spouses Obligar, to wit:

Q

Now according to you, you were paid in the amount of Four Hundred Pesos (P400.00) then you expected your Comareng Pening as financial assistance to Evelyn Garganera, isn't it?

A

Yes, Your Honor.

Q

How long after August 19, 1994, that your Comareng Pening returned to you the amount of Four Hundred Pesos (P400.00)?

A

A week after when Evelyn had already checked up from the hospital.

Q

It was given by you or as voluntary financial assistance, why did you receive the amount or the payment returned to that amount of Four Hundred Pesos (P400.00)?

A

That was telling me that they refused already for the settlement of the case.

Q

And that is why they returned the amount of Four Hundred Pesos (P400.00).

(tsn, pp. 29-30, May 12, 1995.)

From the above-stated clarificatory questions by the trial court, it may gleaned that Raul Galleno no longer had any interest in aiding the victim when he found that the Obligar spouses would still pursue the case against his son, accused-appellant, and hence he found that his offer for settlement was unavailing. Hence, on this point we likewise agree with the trial court when it took the financial assistance to mean an act of settling the case. This does manifest a father's attempt to rescue his guilty son sure incarceration.

The nightmare that was forced into the tender mind of 5-year old Evelyn Obligar Garganera may fortunately haunt her all her life. Justice may not be able to save from this nightmare but it can calm and assure her that her tormentor and abuser shall undoubtedly face retribution.

Four members of the Court - although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray* (G.R. No. 117472, February 7, 1997) that Republic Act No. 7659, insofar as it prescribes the death penalty is unconstitutional - nevertheless submit to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty should accordingly be imposed.

WHEREFORE, finding the conviction of accused-appellant justified by the evidence on record, the assailed decision is hereby AFFIRMED in toto.

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 record of the 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, Panganiban,

Martinez, Quisumbing, and Purisima, JJ., concur.

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