PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PROCOPIO TRESBALLES, ACCUSED-APPELLANT.

G.R. No. 126118. September 21, 1999

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PER CURIAM:

In its decision[1] of 16 July 1996 in Criminal Case No. 4358, the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 9, rendered judgment against herein accused-appellant Procopio B. Tresballes (hereafter PROCOPIO) as follows:

> WHEREFORE, the court finds the accused Procopio Tresballes guilty beyond reasonable doubt of the crime of rape defined and penalized under Sec. 11, R.A. 7659, amending Art. 335 of the Revised Penal Code, and he is hereby sentenced to suffer the penalty of Death.
>
> In addition, the accused is hereby ordered to pay the offended party, Marialyn Tresballes, the sum of P50,000.00 as moral damages and P25,000.00 as exemplary damages to deter other sex perverts from sexually assaulting or molesting hapless and innocent girls, especially their own kins.[2]

Pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. NO. 7659,[3] the case is now before us for automatic review.

The aforementioned criminal case was initiated by the filing of a sworn complaint[4] for rape before the Office of the Provincial Prosecutor of Aklan by the victim Marialyn Tresballes y Quitong (herafter MARIALYN) and her mother Emelinda Q. Tresballes (hereafter EMELINDA), legitimate daughter and wife, respectively, of PROCOPIO.

After considering the affidavits of EMELINDA and MARIALYN as well as the counter-affidavits of PROCOPIO and his witness Susana Pendilla, the Office of the Provincial Prosecutor found sufficient evidence to hold PROCOPIO for trial. It then filed on 26 October 1994 a Complaint[5] charging PROCOPIO of the crime of rape allegedly committed as follows:

> That on or about and during the period from January to April 1994, all in the evening, in Barangay Polocate, Municipality of Banga, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by using force or intimidation, willfully, unlawfully and feloniously have carnal knowledge with his daughter, MARIALYN TRESBALLES, 15 years of age, against the latter’s will.

At his arraignment[6] on 21 November 1994, PROCOPIO entered a plea of not guilty. Trial on the merits thereafter ensued.

The witnesses presented by the prosecution were the victim MARIALYN; EMELINDA; the victim’s sister, MARIANNE; Dr. Jane Legaspi, a medical officer of the Rafael S. Tumbokon Memorial Hospital; and Ronce Reyes, a barangay captain of Andagao, Kalibo, Aklan.

The Office of the Solicitor General (OSG) makes a faithful summary of the evidence for the prosecution in the

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Appellee's Brief, which we hereby adopt and reproduce, thus:

> Marialyn Tresballes is the third child in a brood of seven (7) children of appellant Procopio Tresballes and Emelinda Tresballes. The six (6) other children are Marianne, 21 years old; Dennis, 18 years old; Amy, 12 years old; Anna Mae, 10 years old; Christine, 6 years old; and Crystal, 3 years old (October, 19, 1995, TSN, pp. 5-6).
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> In 1986, appellant and his family moved to Barangay Polocate, Banga, Aklan, where appellant worked as a farmer in the land owned by Rafael Retumar (Ibid, TSN, p. 6).
>
> In 1991, appellant alone moved to Kalibo, Aklan, where he lived at the Raminta's boarding house near the Ceres terminal. Appellant worked as a washer of Ceres buses. His family was left behind at Polecat, Banga, Aklan (Ibid, TSN, pp. 6-7).
>
> In February 1993, appellant and his wife moved to Kalibo, where they started to sell condiments (Ibid, TSN, p. 11). On December 20, 1993, appellant, his wife and their two children, Christine and Crystal transferred to Andagao, Kalibo, Aklan, while Marianne, the eldest child, stayed in a boarding house in front of Aklan Polytechnic (Ibid, p. 15) where she was then taking a secretarial course (January 9, 1995, TSN, p. 10). On the other hand, their other children, Dennis, the victim Marialyn, Amy, and Anna Mae, remained in their house at Polocate, Banga, Aklan. These four (4) children, however, obtained their allowances and food supplies from their parents in Andagao, Kalibo, Aklan (October 19, 1995, TSN, pp. 15-16). Marialyn and Dennis were then in high school and studying at Aklan State College of Agriculture (ASCA), Banga, Aklan (October 19, 1995, TSN, p. 16; December 9, 1994, TSN, p.5). Due to the above mentioned circumstances of the Tresballes family, Emelinda could only visit her children in Barangay Polocate, Banga, Aklan, once or twice a month on Saturdays (December 9, 1994, TSN, p. 8). Appellant visited his children, including Marialyn, in Polocate, Banga, on Mondays after he had finished selling his goods at the Banga market and after having gone home to his house in Caleb, Aklan (Ibid, TSN, p. 8).
>
> Marialyn was fourteen (14) years old at the time she was first raped by appellant, having been born on June 18, 1979 (Ibid, TSN, p.6).
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> In the evening of January 1994, a Monday, appellant went to his house in Polocate, Banga, Aklan, to visit his children. Christine and Crystal were already staying in that house at that time with Dennis, Marialyn, Amy, and Anna Mae. Appellant spent the night at that house. The house had two (2) bedrooms, the one near the other room was occupied by Marialyn and her four (4) younger sisters. Appellant stayed in the room of his daughters (December 9, 1994, TSN, p. 9).
>
> Marialyn, her four (4) younger sisters, and appellant, who wore only his briefs when he slept, occupied one bed (Ibid, TSN, p. 23). Marialyn lay down between appellant and her sisters. Appellant lay down on her left side and all her four sisters slept on her right side. That night, while Marialyn and her sisters were asleep, appellant took of Marialyn's shorts and panty such that when she woke up she was already naked and appellant was on top of her. Wondering what appellant was trying to do and what his intentions were, Marialyn tried to push him away but she could not do so (Ibid, TSN, pp. 10-11). Appellant then held Marialyn's two hands with one of his hands and raised them over her shoulder. At this point, Marialyn tried to move her legs so that appellant would fall off her body, but she failed in this. Appellant inserted his penis inside her vagina and made a push and pull movement. As appellant had sexual intercourse with her, she could feel pain in her vagina and hands (Ibid, TSN, p. 12). Marialyn was in tears as appellant vent his lust on her. She tried to wake her sisters but she could not rouse them from deep slumber. After being done with her, appellant threatened to kill all of them should she tell her mother about the incident. After giving that warning to Marialyn, appellant lay down beside her while Marialyn rose and put on her panty, shorts, and t-shirt, then lay down near her sisters and fell asleep after some time (Ibid, TSN, p. 13).
>
> Marialyn woke up at about five o'clock in the morning the following day, took a bath and washed her panty. It

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was then that she noticed blood stains on her panty. That same morning, she also saw bloodstains on the mat of the bed where she had slept. She prepared breakfast and went to school. Marialyn did not tell anyone about the incident (Ibid, TSN, pp. 14-15).

A week after the incident, Marialyn's mother, Emelinda, visited her in school. Marialyn told her mother that she could not sleep well in their house because he was always touching her. However, she did not tell her mother what actually transpire that night in January 1994 because she feared appellant's cruelty. Appellant was the type who easily became angry and had a tendency to throw things at the members of his family. Sometimes he would even brandish a bolo at them (Ibid, p. 15).

Just before supper time early in the evening of one Monday in March 1994, appellant arrived at their house in Polocate, Banga, Aklan, and brought with him food and fish to be cooked (Ibid, TSN, p. 54). Around seven o'clock in the evening, appellant and all his six children namely: Dennis, Marialyn, Amy, Anna Mae, Christine and Crystal, had supper (Ibid, TSN, p. 55). After supper, Marialyn studied her lessons then went to bed, and appellant followed suit (Ibid, TSN, p. 57). However, this time they slept on the floor because the bed had broken down (Ibid, TSN, pp. 16-17). Just before they went to sleep, appellant told Marialyn's four (4) younger sisters to move further apart from one another because the weather was warm. The children slept in the position they assumed during the first incident that night in January 1994 with Marialyn about one (1) meter away from her sisters (Ibid, TSN, pp. 19-21). She tried to change places with her sisters but was prevented from doing so by appellant. Marialyn could not sleep because appellant forcibly took off Marialyn's panty while she was lying down. She tried to hold on to her panty and kicked him but to no avail because appellant was strong. Appellant then placed himself on top of her, such that efforts to defend herself proved futile (Ibid, TSN, p. 18; TSN, p. 61). Appellant was able to successfully insert his penis into her vagina and repeatedly made push and pull movements. At this (instance), she could only cry. She felt pain in her vagina. After having performed his bestial act on his daughter, appellant slept. Marialyn looked for her panty and shorts, wore them again and cried because of what appellant had done to her (Ibid, TSN, p. 18).

The following morning, Marialyn noticed that her mouth was reddish and hurt (Ibid, TSN, p. 61). However, she did not reveal her horrifying experience to anyone because she was afraid of appellant (Ibid, TSN, p. 20).

One Monday afternoon in April 1994, appellant arrived at their house in Polocate, Banga, aklan. Around 7:30 in the evening, appellant, Dennis, Marialyn, Anna Mae, Amy, Christine and Crystal ate their supper (Ibid, TSN, pp. 65-66). Afterwards, Marialyn cleaned the table and studied her lessons, then went to their room and prepared to go to sleep on the floor. She asked her two younger sisters to sleep beside appellant instead, but appellant was angry upon noticing it (Ibid, TSN, pp. 68-69). Later that night, while Marialyn was still awake, appellant again forcibly removed her panty (Ibid, TSN, p. 21). She struggled, pushed and kicked him, but to no avail. She also shouted to her sisters who were all fast asleep, but appellant silenced her by slapping her on the mouth (Ibid, TSN, pp. 71-73). Then he placed himself on top of her and had sexual intercourse with her (Ibid, TSN, pp. 22-23). Around midnight, appellant had sexual intercourse with her again even while she was asleep (Ibid, TSN, p. 23; p. 17). She woke up only to find herself without her panty and with appellant already on top of her performing the sexual act (Ibid, TSN, p. 24). She kicked him several times but failed to dislodge him since he was very strong. After the act, she could only cry in a low voice because he warned her not to awaken her sisters (Ibid, TSN, pp. 75-76).

The morning after, she prepared breakfast and went to school and as in the past incidents, did not tell anyone what had happened (Ibid, TSN, pp. 76-78).

Marialyn never had any sexual experience before the incident of January 1994. Her menstrual period came in January, February, March and April, but in May and onwards she stopped menstruating (Ibid, TSN, p. 24).

In the month of July 1994, Marialyn moved to Andagao, Kalibo, Aklan, where her mother, appellant and sister Marianne were staying for she was told by her mother to stay with them and wash their clothes (Ibid, TSN, p.25). During her stay in Andagao, she did not tell any one about the rapes committed against her by appellant

(Ibid, TSN, p. 26).

On October 11, 1994, Emelinda brought her daughter Marialyn to Dr. Jalbuena for a medical check-up because she noticed that Marialyn was pale, her abdomen was getting bigger and her breast were becoming large (May 12, 1995, TSN, p.6). Dr. Jalbuena told Emelinda that Marialyn was pregnant and that she be taken to Saint Gabriel Hospital for further examination. As it turned out, her pregnancy was confirmed (Ibid, TSN, p.7). Upon arriving at their house in Andagao, Kalibo, Emelinda asked Marialyn who had impregnated her and the latter answered that it was appellant (December 9, 1994, TSN, p. 28). She asked her mother no to reveal her pregnancy to anyone because she was afraid of her father (May 12, 1995, TSN, pp. 8-9).

About 6:00 o'clock in the evening of the same day, appellant arrived at their house after selling his goods in the market. Emelinda and Marialyn were then upstairs in their room. They were both crying. When appellant went to their room, Emelinda confronted appellant and asked him, "Why did you do this to your daughter?" Instead of answering the question, appellant approached Marialyn, asked her what she had told her mother, then slapped her three (3) times. Emelinda prevented appellant from further hurting Marialyn by putting her arms around him from behind. Marialyn ran downstairs and went to the room of their landlady, Ofelia Mariano (Ibid, TSN, pp.9-10). Ofelia Mariano told appellant to calm down and advised him to discuss the matter calmly. But hen appellant was so furious and insisted that Marialyn face him (Ibid, TSN, p. 11). Around 6:30 that evening, Marianne, the eldest daughter, arrived from her work (Ibid, TSN, p. 12) and noticed that there was a commotion inside the house (January 9, 1995, TSN, p. 12). At this time, appellant and Emelinda were grappling for appellant's gun (May 12, 1995, TSN, p. 12). When Marianne inquired from them what was going on her mother told her that her sister Marialyn was pregnant with appellant's child. Upon learning that, Marianne cried and was told by her mother to look for Marialyn who was hiding downstairs (January 9, 1995, TSN, pp. 13-14). Marianne found Marialyn crying and trembling inside the room downstairs while hiding under a table (Ibid, TSN, p. 15). Marialyn told Marianne that it was appellant who had impregnated her. Marianne believed her because appellant had made several attempts against her when she was in her second year high school up to her freshman year in college (Ibid, TSN, pp. 16-17). With their mother's permission, the two sisters decided to report this matter to the police (May 12, 1995, TSN, pp. 13-14). The two sisters, accompanied by their landlady, Ofelia Mariano, went to the Barangay Captain Ronce Reyes, and reported to him that Marialyn had been raped by appellant and that he had threatened Marialyn for exposing his criminal acts to her mother (February 27, 1995, TSN, pp.4-5). However, Reyes advised them to report the matter to police authorities. For this purpose, he accompanied the two sisters to the Kalibo Police Station where they were investigated (Ibid, TSN, p. 7). Thereafter, around four (4) policemen, accompanied by Reyes, were dispatched to Marialyn's house in Andagao, Kalibo, Aklan (Ibid, TSN, p.8) to look for appellant. Appellant went downstairs upon being called by the policemen, who asked him to go with them to the police station. He agreed to that. Emelinda then informed Reyes that appellant had a gun which she handed over to Reyes and which he in turn gave to Desk Officer Quinesio upon reaching the police station. The gun was a .38 caliber revolver, home made, with six ammunitions (Ibid, TSN, pp. 9-12).

On October 12, 1994, Marialyn was brought by her mother to the DR. Rafael S. Tumbokon Memorial Hospital for physical examination. Thereat, Dr. Jane Legaspi conducted a medical examination on Marialyn and prepared the Medico-Legal Certificate (Exhibit B), which indicated the following:
IE-introitus admits 2 fingers presence of old hymenal tears at 2:00, 7:00, 9:00 o'clock positions.

(-) hematoma/abrasions

Abdominal Examinations:
-uterus enlarged about 18 cm. (fundi height)
-presence of fetal heart beat (RLQ)
LNMP= March 22, 1994
EDC= Dec. 29, 1994

Medications given:

(1) USA Natal, 1 Cap. Daily for 1 mon.
(2) Suggest ultrasound for fetal aging
(3) Pre-natal check-up after 1 mon.

REMARKS:
Impression: Intrauterine pregnancy, 29 1/7 weeks AOG.

Dr. Legaspi explained that the old hymenal tears could have been caused, among others, by penis penetration (January 9, 1995, TSN, pp.3-5).

On January 3, 1995, Marialyn delivered a baby boy (Ibid, TSN, p. 6).[7]

The witnesses presented by the defense were PROCOPIO; PROCOPIO's son, Dennis Tresballes; PROCOPIO's sister, Leticia Estrella; Dr. Irenea Tejada; Lydia de la Cruz; and Susana Pendilla. The last two are stallholders at the wet market of Kalibo, Aklan. We quote verbatim the trial court's summary of the evidence for the defense, to wit:

The accused declared that he and his wife were married in 1976 and have 7 children among whom were Marianne, 21 years old, Dennis, 18 years old, and Marialyn, 16 years old. The rest are all younger aged 12 to 3 years old. Since 1986, they lived in Polocate, Banga, Aklan where he worked as a farmer. In 1991, he was already staying at a boarding house near the Ceres bus terminal at Kalibo, Aklan, where he worked as a washer of buses. His wife and children remained at Polocate.

Sometime in December 1991, he was told by somebody that his wife was having an affair with Condrado Ricaforte, Jr., which his wife admitted but asked for forgiveness and they eventually reconciled. In November 1992, his wife again had an affair with a certain Openiano Farales and he actually caught the latter kissing his wife but, again, upon his wife's promise not to repeat it and for the sake of their children, they reconciled.

After February 1993, he lived together with his wife in Kalibo and they started selling condiments. On one occasion, he did not see his wife around and when she arrived later, they had a quarrel resulting in their separation only to reconcile later.

On December 20, 1993, he and his wife, together with their 2 younger children Christine and Crystal, were staying in the house of Ofelia Mariano in Andagao, Kalibo, Aklan, while Marianne, the eldest daughter, stayed in a boarding house in front of her school in Kalibo, Aklan. Dennie, Marialyn, Annie Mae, remained in Polocate and either of them get their allowance for food from Kalibo.

He denies going home to Polocate, sleeping there and raping his daughter Marialyn on any Monday in January, February, March, and April 1994. He also denies having threatened Marialyn should she tell his abuses to her. He does not know, though, of any reason why his own daughter would accuse him of rape.

In August 1994, when Marialyn slept with them in their boarding house in Andagao, Kalibo, Aklan, she suffered stomachache and was brought to a doctor. But his wife informed him only that the findings of the doctor was that Marialyn was acidic. He told his wife to buy all the medicines prescribed.

On October 10, 1994, he noticed that Marialyn's stomach was bulging and her breasts enlarged so that when she and his wife arrived at their boarding house, he summoned Marialyn to the other room and asked her if she was pregnant but she denied. Suspicious, he instructed his wife to bring Marialyn to a doctor and the latter (Marialyn) was found to be pregnant. His wife told him that Marialyn and her older brother Dennis were only "playing" so that they would just keep the matter a secret and send Dennis to Manila. He also confronted Marialyn about this and she admitted to him that it was Dennis who impregnated her for which he even slapped her. Marianne was not around at that time.

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The following day, October 11, 1994, while he was sleeping at their boarding house at Andagao, the police arrived so he dressed up and upon being told that a complaint was filed against him, went with them. When they arrived at the police station, Marialyn and Marianne were already there and 10 minute later his wife also arrived. His wife then brought their two daughters to another room and when they came out, she pointed him to the police to be put to jail. No warrant of arrest was shown to him.

At the police station, he was shown a gun allegedly coming from his wife but denies owning it, claiming that it night be owned by her paramour.

He also declared that Marianne testified against him because she was angry at him for having been slapped by him once for selling her calculator and spending the proceeds with her boyfriend.

Further, he claims that he and his wife spent for Marianne's education and it is not true that he does not want his daughters to study because they will just get married after finishing their course, the truth being that he wanted then all to finish their studies as he himself had not studied (TSN, 10/19/95, pp. 5-30).

LETICIA ESTRELLA, sister of the accused, substantially testified that on October 25, 1994, she went to Polocate to confront Dennis and the latter admitted to her having abused his younger sister Marialyn on the months of March and April 1994. Dennis further confided to her that they imputed the matter to his father because they were afraid of him and that their mother told them to do so. She also declared that Emelinda also admitted to her that her husband is cruel to them. The accused himself denied to her having abused his own daughter. (TSN, 8/21/95, pp. 4-8).

LYDIA DE LA CRUZ, substantially declared that she is a second cousin of Erlinda Tresballes and a stall holder at the Kalibo wet market only adjacent to where the accused was selling his condiments; that during the months of January, February, March, an April 1994, the accused never slept outside his stall or boarding house. This she knows because they usually close their stalls at the same time and his boarding house in Andagao is also near her house; that the accused had to wake up at 3:00 o'clock in the morning when they would sell their goods at different market places; that she saw Dennis and Marialyn together getting their provisions every Saturdays and Sundays from their parents in Kalibo (Ibid, pp. 24-29).

SUSANA PENDILLA testified that she is a stall holder at the Kalibo wet market and she knows the accused and his wife for a long time; that during Mondays in January 1994, the accused and his wife were selling goods in Banga, Aklan, in the morning and would come back to their stall at about 2:00 o'clock in the afternoon and re-pack sugar and other items to be sold the following day. On Tuesdays, they would also sell their goods in Ibajay, sometimes in Libacao and in Makato. The same is true also in the months of February, March, and April 1994. During these months, she also saw Marialyn and her brother getting their subsistence from Kalibo (TSN, 10/18/95, pp. 3-9).

DR. IRENEA TEJADA, declared having examined Marialyn on August 8, 1994 and found her to be 5 months pregnant (Exh. 2). But Marialyn did not return for pre-natal check-up. She recorded the complaint of Marialyn as abdominal pain. She had issued a medical certificate in connection with her examination upon the request of Mrs. Fe Ramintas (TSN, 11/22/95, pp. 3-6).

DENNIS TRESBALLES, testified that he is staying in Polocate with his younger sisters, Marialyn, Annie Mae, and Christine; that in January 1994, their father worked as a washer with Ceres Lines and in April 1994 their father sometimes goes home to Polocate bringing fish provisions usually after market day in Banga. He sleeps in their house in Polocate and goes back to Kalibo the following day. Their father would also sleep with his sisters inside the same room but he did not notice any untoward incident while his father was sleeping in their house. It is his mother and cousin that spend for his education before he stopped (Ibid, pp. 9-17).[8]

The trial court gave full faith and credit to the testimony of MARIALYN, and brushed aside PROCOPIO's defense of alibi. It did not believe the corroborative testimony of Lydia de la Cruz, for being PROCOPIO's friend

and neighbor who was requested to testify for the latter and had been regularly attending the hearings; besides, her testimony that PROCOPIO was sleeping in his stall during the months in question was only an assumption since she never actually saw PROCOPIO doing so. Witness Susana Pendilla, on the other hand, was unable to categorically state that PROCOPIO slept in his stall during the months of January, February, March and April of 1994.

The trial court further ruled that PROCOPIO failed to prove that it was physically impossible for him to be at the scene of the crime, a requirement in proving an alibi. It was established that Polocate could be reached from Andagao in one to two hours, or about one hour by tricycle or motorcycle.

The trial court gave scant consideration to PROCOPIO's claim of ulterior motive in that the charge of rape was contrived by his wife and daughters to avenge the cruelty and neglect they may have experienced and for them to continue their illicit relationships. On the contrary, it found sufficient reason to believe that MARIANNE and MARIALYN were animated by a common desire to bring their father, PROCOPIO, to the bar of justice. MARIANNE was impelled by a genuine concern to protect her younger sisters from experiencing the same fate she had had for the several attempts on her honor by PROCOPIO. Moreover, MARIALYN would not have filed the complaint if indeed PROCOPIO did not rape her for it was unnatural for a victim of rape to subject herself to shame just to satisfy a mother's or a sister's desire for vengeance.[9] Finally, as to EMELINDA, who was equally fearful of PROCOPIO, her silence was not incredible since not all mothers have sufficient courage to protect a sibling.[10]

Neither was the trial court impressed with PROCOPIO's theory of that the real culprit was his son DENNIS, for the latter was presented merely to prove that PROCOPIO did not go to Polocate on the months when PROCOPIO allegedly raped MARIALYN.

In imposing a single penalty of death despite the evidence that MARIALYN was raped more than once, the trial court made reference to the allegation in the complaint that the crime was allegedly committed "on or about and during the period from January to April 1994, all in the evening," and rationalized that while the phrase "all in the evening" suggests more than one offense, it would also refer to "the series of acts which eventually lead to the consummation of only one rape." Moreover, the title of the charge, although not controlling over the body of the complaint is only "for Rape," which may indicate one crime. The doubt should be resolved in favor of the accused who must have thought upon arraignment that he was charged for only one count of rape. The trial court further observed that the prosecution admitted in its memorandum the defect and signified approval of the imposition of a single penalty.

In his Appellant's Brief,[11] PROCOPIO contends that the trial court erred:

> I.
> XXX GRAVELY IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE DEFINED AND PENALIZED UNDER SECTION 11, OF REPUBLIC ACT 7659, AMENDING ARTICLE 335 OF THE REVISED PENAL CODE AND SENTENCING HIM TO SUFFER THE PENALTY OF DEATH; AND ORDERING HIM FURTHER TO PAY DAMAGES OF P50,000.00 FOR MORAL DAMAGES AND P25,000.00 AS EXEMPLARY DAMAGES.
>
> II.
> XXX IN DISCREDITING THE TESTIMONY OF THE ACCUSED-APPELLANT; AND IN NOT GIVING FULL WEIGHT AND CREDIT TO THE TESTIMONIES OF DEFENSE WITNESS LETICIA ESTRELLA, LYDIA DE LA CRUZ, SUSANA PENDILLA, AND DR. IRENEA TEJADA, RESPECTIVELY.

PROCOPIO discusses these errors jointly. He argues that the evidence of the prosecution failed to achieve the test

of moral certainty for the following reasons: (1) MARIALYN failed to shout in spite of the fact that she was sleeping beside her sisters during the time the alleged rape incidents occurred in the months of January, February, March and April 1994; (2) DENNIS did not notice any untoward incident during the time his father slept at their house; (3) MARIALYN failed to report the incident to the authorities or to her relatives; (4) per testimony of Dr. Legaspi, the expected date of delivery of MARIALYN was 29 December 1994 since her last normal menstrual period was on 22 March 1994, hence PROCOPIO could not possibly have had a sexual encounter with MARIALYN in April 1994 as MARIALYN gave birth only on 3 January 1995; (5) it was unnatural, if not strange, for MARIALYN to fail to show any sign of hatred or abhorrence towards her father when she transferred to the latter's house; and (6) MARIALYN's delay in reporting the incident to her mother and the authorities was not explained.

In the Appellee's Brief, the Office of the Solicitor General (OSG) prays that we affirm the challenged decision. But, it adds and insists that there should not only be one penalty of death, but four, since the prosecution's evidence clearly established that PROCOPIO committed four (4) acts of rape against MARIALYN. Likewise, in conformity with the existing policy[12] the victim is entitled to an indemnity of P50,000 for each count of rape.

It is well established that a judgment in every prosecution for rape depends on the truthfulness and credibility of the victim's testimony and in the evaluation thereof we are bound by the following guiding principles: (1) an accusation for rape can be made with facility: it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[13]

After a painstaking perusal of the transcript of stenographic notes and review of the evidence of the prosecution and the defense we are convinced that PROCOPIO raped his 15-year old daughter MARIALYN, and his guilt therefor was established beyond reasonable doubt. This view is supported by MARIALYN's testimony, viz:

> Q Alright, can you recall sometime in the month of January 1994 if an unusual incident occurred to you?
> A Yes, sir.
>
> Q Will you please tell the court what happened?
> A He abused me.
>
> Q What time of (the) day did this happened?
> A Nighttime, when we had just slept.
>
> Q Where were you sleeping on that particular room when that happened?
> A On bed.
>
> Q Were you alone sleeping in that bed or did you have companions?
> A I have companions.
>
> Q Who were your companions that slept in that bed at the time of the incident?
> A My four younger sisters.
>
> Q Where were they in relation to you while you were sleeping?
> A Beside me.
>
> Q How about your father, where was he sleeping?
> A Beside me also.

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Q On what side?
A On my left side.

Q How about your four sisters, on what side were they to you?
A On the right side.

Q Now, you said that you were abused by your father, what do you mean?
A He undressed my pants.

Q What were you wearing that evening?
A I wore short and T-shirt.

Q Besides the short that you wore, did you wear any thing else?
A My panty and sando.

Q Were you awake when your panty and shorts were taken off?
A When I woke up I found out that I have no more short and panty.

Q Why, did you wear your shorts and your panty before going to sleep that evening?
A Yes, sir.

Q Now, when you awoke, where was your father?
A He was on top of me.

Q When you saw your father on top of you, what did you do?
A I tried to push him.

Q Did you succeeded in pushing him away from you?
A I could not repulse him.

Q What else did your father do to you while he was on top of you?
A He held me with his two hands.

Q And when you thus [sic] being held, what did you do?
A I tried to free myself from his hold but I did not succeed.

Q Alright, did you do anything with your legs while your father was on top of you?

ATTY. RESURRECTION: Objection for being leading.

ATTY. MABASA: It is not leading.

COURT: Let her answer.

A I tried to move my legs so that he will fall.

Q Did you succeed?
A No, sir.

Q Now, what else happened while your father was on top of you while holding your hands?
A He made a push and pull movement.

Q And did you experience anything?
A I felt pain.

Q In what part of your body did the pain come from?
A In my vagina and my hands that he was holding.

Q Do you know what caused the pain in your private part?
A He inserted his penis inside my vagina.

Q And was your father able to penetrate your vagina?
A Yes, sir.

Q And what did you feel when there was penetration?
A It was painful.

Q And in the meantime that these things was happening, where were your hands?
A He was holding my two hands and raised then up.

COURT TO INTERPRETER:

You describe, over her shoulder, what hands were held.

INTERPRETER:

As demonstrated by witness, her two hands were raised over her right shoulder.

ATTY. MABASA

Q How many hands of your father were holding your two hands?
A One hand and he pinned them down.

Q Now, when you said that your father succeeded in penetrating you, what did your father do when the penetration happened?
A After my father succeeded, he then told me not to tell my mother otherwise, he will kill us.

Q And during the time that your father was doing these acts to you, did you not cry for help to your other sisters who were according to you were sleeping beside you?
A I was crying and I tried to wake up my sisters but they were fast asleep.

xxx
Q In the month of March 1994, can you recall if there was a time when an unusual incident happened to you?
A Yes, sir.

Q Alright, what day of the week did this happen?
A Monday also, sir.

Q What time of (the) day did this unusual incident happened to you?
A When we were sleeping.

Q Were you sleeping in the same room?
A Yes, sir.

Q Together with your sisters?
A Yes, sir.

Q Now, in that incident in the month of March 1994, was there a bed in that bedroom where you and your sisters slept?
A During the month of March 1994, there was no more bed. The bed was arranged in a standing position and we were already sleeping on the floor.

Q Why, did anything happen to that bed that you no longer use the same in the month of March 1994?
A It was broken.

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Q And on what did you sleep on the floor?
A On a mat.

Q Where was your father at the time of the happening of this unusual incident in the month of March 1994?
A He was there.

Q Will you please tell us what happened?
A He repeated to me the bad act that he did before.

Q Were you already asleep when this happened?
A I was not sleeping yet.

Q Who were your companions in that room?
A My four younger sisters.

Q When the incident happened, what were your four sisters doing?
A They were already sleeping.

Q Why were you not asleep at that time?
A I could not sleep because he was sleeping also in the same room.

ATTY. MABASA: Your Honor, please, we would like to make it of record that the witness has been crying in the course of her testimony.

Q Now, what did your father do to you?

ATTY. RESURRECTION: Already answered.

ATTY. MABASA: I was asking her to give the details.

COURT: Let her answer.

A He forcibly took my panty.

ATTY. MABASA:

Q In what position were you when your father forcibly took off your panty?
A I was lying down.

Q And since you were sleeping according to you, what did you do to prevent your father to take off your panty?
A I tried to hold on (to) my panty so that he could not take it off and I kicked him.

Q And did you succeed in preventing your father from taking off your panty?
A I did not.

Q Were you wearing a panty at that time?
A Yes, sir.

Q How about your panty, what happened to it?
A Together when he pulled my short.

Q And after your short and panty were forcibly took off by your father, what did he do to you?
A He placed himself on top of me.

Q Now, what did you do when your father placed himself on top of you?
A I tried to defend myself not to do again what he did to me before but he was strong enough.

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Q And when your father was on top of you, what else did he do?
A He made a push and pull movement again.

Q Did you feel anything in your private parts?
A Yes, sir.

Q What did you feel?
A I felt pain.

Q Why did you feel pain in your private parts?
A He inserted his penis to my vagina.

Q And did your father succeed in inserting his penis into your vulva?
A Yes, sir.

Q And when he penetrated, what did your father do?
A He made a push and pull movement.

Q And during that push and pull movement, what did you experience?
A I felt pain.

Q And was your father able to finish the act?
A Yes, sir.

Q And after that, what did he do?
A He left me.

Q Where did he go?
A Then he slept.

Q How about you, what did you do?
A I looked for my panty and short and then cried.

xxx
Q In the month of April 1994, can you recall of a time when an unusual incident again happened to you?
A Yes, sir.

Q What time of day?
A Nighttime, sir.

Q What day of the week was it?
A That was Monday.

Q Have you already eaten your supper that evening?
A Yes, sir.

Q And who were the people in that house that evening?
A My elder brother and my four younger sisters.

Q In what room did the incident happened?
A In the same room.

Q In the same room where the incident that happened in the month of January 1994 and in the month of March 1994 happened?
A Yes, sir.

Q Now, were you already asleep when the incident started?

A No, sir.

Q You mean you were still awake?
A Yes, sir.

Q How about your small sisters, what were they doing when the incident started?
A They were already sleeping.

Q What happened while according to you you were still awake?
A He forcibly wanted to take off my panty?

Q Who wanted to forcibly take off your panty?
A My father.

Q The same accused?
A Yes, sir.

Q What were you doing when your father wanted to take off your panty?
A I defended myself so that he could not do it again.

Q What was your position, were you standing or were you lying down or what?
A We were lying down.

Q Were you lying on bed or what?
A On the floor.

Q On the same floor of the bedroom?
A Yes, sir.

Q And did you succeed in preventing your father from taking off your panty?
A No, sir, because he successfully took off my panty as he was very strong.

xxx
Q Now, after your father succeeded in pulling off your panty and your shorts, what did you do?
A He then placed himself on top of me again.

Q Now, what did you do when your father again placed himself on top of you?
A I tried to defend myself and pushed him away but I could not because he was very strong.

COURT:

Q Now, when your father placed himself on top of you, was he fully clothed?
A No, ma'am, because whenever he sleep, he wears his brief only.

Q And when he placed himself on top of you, he still wore his briefs?
A No, ma'am.

Q You mean to say he was already naked?
A No.

Q What do you mean "no"?
A He has no more brief whenever he is on top of me.

COURT: Please continue.

ATTY. MABASA:

Q And after your father placed himself on top of you, what else did you do?

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A He then made a push and pull movement again.

Q Was there any insertion at this time?
A Yes, sir.

Q And was he able to finish the act?
A Yes, sir.

Q Now, after that, what did he do?
A He went away and lie down.

Q How about you, what did you do?
A I cried.

Q For how long did you cry that evening?
A For a long time.

Q Were you able to go to sleep?
A Yes, sir.

Q Now, was that the only incident that happened that night?
A It was repeated again at midnight.

Q On the same evening?
A Yes, sir.

Q Yes, sir.

Q Were you asleep when the second incident occurred?
A I was awakened.

Q And what was your father doing when you woke up?
A He (had) already taken off my panty.

Q You mean to say that when you woke up you have no more panty?
A No more, sir.

Q And what did your father do to you?
A He repeated again what he did.

Q Did you do anything to prevent your father from doing to you the same act?
A I was pushing him out but I could not push him because he was strong.[14]

The trial court correctly gave weight and value to the above-quoted testimony:

> The testimony of Marialyn Tresballes, the offended party, appears in its entirety to be categorical, positive and convincing. She had not wavered nor detracted from her direct testimony which remained unshaken by rigid cross-examination. She has narrated the important details of her defilement and how she vainly tried to prevent it.
>
> The records show that she was crying while relating her horrible experiences. This is evidence of the credibility of the rape charge (Pp. Vs. Joya, 227 SCRA 9). She may not have noticed when her father undressed her, but an unsuspecting girl of tender age once in deep slumber may not easily be awakened if the undressing is (sic) cautiously done. She may not have shouted to her sisters beside her while being abused, but she tired to wake them up. She may not also have told the incident to anybody immediately thereafter, but she was warned by her father not to tell what he did, otherwise he would kill all of them. She may not have pleaded

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> to her father not to molest her again, but she was afraid of him. She may not have recalled the exact times and dates she was abused, but remembers them to have occurred on a Monday night in the months of January, March and April 1994.[15]

No compelling reason exists for us to overturn the trial court's assessment, considering that it had the unique opportunity to observe the complainant's demeanor and deportment during trial.[16]

Further enhancing the worth or value of MARIALYN's testimony was MARIANNE's declaration that she, too, was a victim of PROCOPIO's sexual perversity.[17] Evidence tending to show the commission of a crime other than the one with which the accused stands charged although generally excludible for being unduly oppressive and unfair may however be admitted as proof of design, plan or scheme pursuant to Section 34, Rule 130 of the Rules of Court.

The apparent reticence and hesitation of MARIALYN to seek the aid of relatives and her reluctance to show her ire and resentment towards PROCOPIO would not in any manner diminish the trustworthiness of her testimony. We need not stretch our imagination to understand MARIALYN's considering that she, after all, was in no position to oppose, much less, protest, against her ravisher who was her own father and regarded by the members of the family as unfeeling, cruel and domineering.[18] Suffice it to say then that to the young and puerile mind of MARIALYN the threats of PROCOPIO to inflict harm on her was not imagined but real. It is a matter of common knowledge, drawn from judicial experience, that young girls usually conceal for some time the assault upon their virtue because of the threats on their lives.[19]

It is unthinkable, if not completely preposterous, that MARIALYN would audaciously concoct a story of rape against her father in wanton disregard of the unspeakable trauma and social stigma it may generate on her and the entire family. In the absence of proof that she was moved by a devious motive to falsely implicate PROCOPIO in a heinous crime which calls for the imposition of the supreme penalty of death, the inescapable conclusion would be that her testimony is worthy of full faith and credit.[20]

The alleged discrepancy in the estimated date of delivery, i.e., 29 December 1994, vis-a-vis the actual date of giving birth, i.e., 3 January 1995, will not alter the established fact that PROCOPIO had sexually molested MARIALYN in January, March, April and May of 1994. Moreover, the testimony of Dr. Jane Legaspi shed light on the matter. She explained that an allowance of two weeks from the estimated date of delivery must be considered.[21]

PROCOPIO's defense of denial and alibi are worthless in the face of his positive identification by the unfaltering testimony of MARIALYN. Moreover, he failed to show that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[22]

The next issues for our resolution are whether PROCOPIO was indicted for a single offense and whether the trial court correctly imposed the death penalty. We agree with the trial court in its ruling on both issues.

The allegation in the complaint particularly described the crime as having been committed "during the period from January to April 1994 all in the evening..." and the caption of the complaint indicates that the case is "FOR RAPE." Solemnly guaranteed by the Constitution is the right of the accused to be informed of the nature and cause of the accusation against him.[23] In Pecho v. People[24] we elaborated on the objectives of this right of the accused, to wit: (1) to furnish the accused with such a description of the charge against him as will enable him to make his defense; (2) to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and (3) to inform the court of the facts alleged, so that it may decide whether they were sufficient in law to support a conviction.

We do not hesitate to rule that the wordings of the complaint cannot intelligently convey to an ordinary mind that more than one offense were committed. What they reasonably suggest was that there was one rape committed during the period alleged.

Since the complaint charges only one crime of rape, then, consistent with the constitutional right of the accused to be informed of the nature and cause of accusation against him , PROCOPIO cannot be held liable for other acts of rape. There can only be one conviction for rape if the information charges only one offense, even if the evidence shows that more than one was in fact committed.[25]

We find sufficient basis for the imposition of the death penalty. Under Article 335 of the Revised Penal Code, as amended by R.A. 7659, the presence of the special qualifying circumstance of minority of the victim and the relationship of the offender with the offended party justifies the imposition of the supreme penalty of death.

Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659 provides, inter alia, as follows:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
>
> 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

In the instant case, MARIALYN was fifteen (15) years when she was raped, and the rapist was her own legitimate father, PROCOPIO. These two circumstances were specifically alleged in the complaint and were duly proved at the trial. PROCOPIO admitted such circumstances.

Four Justices of the Supreme Court, although maintaining their adherence to the separate opinions expressed in People v. Echegaray[26] that R.A. 7659, insofar as it prescribes the death penalty is unconstitutional, nevertheless submit to the ruling of the majority to the effect that this law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

With regard to the civil indemnity, the prevailing rule is that the civil indemnity in rape cases should be P50,000.00. This amount is increased to P75,000.00 in cases where the crime was committed under circumstances which justify the imposition of the death penalty.[27]

We sustain the trial court with respect to the award of moral and exemplary damages. In rape cases the victim may recover moral damages in such amount as the court may deem just even in the absence of proof of mental and physical suffering of the victim, it being a necessary and inherent consequence of the crime of rape.[28] Exemplary damages may be awarded in incestuous rape to deter other fathers with perverse or aberrant sexual behavior from sexually abusing their own daughters.[29]

WHEREFORE, the challenged judgment of Branch 9 of the Regional Trial Court of Kalibo, Aklan, in Criminal Case No. 4358 imposing upon accused-appellant Procopio B. Tresballes the death penalty is hereby AFFIRMED, subject to modification as to the monetary awards, by further ordering accused-appellant to indemnify the victim Marialyn Tresballes the amount of P75,000.00.

Costs de oficio.

SO ORDERED.

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

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[1] Original Record (OR), 147-161; Rollo, 27-40. Per Judge Dean R. Telan.

[2] OR, 160-161; Rollo, 39-40.

[3] An Act to Impose the Death Penalty on Certain Heinous Crimes Amending for that Purpose the Revised Penal Code, As Amended, Other Special Penal Laws, and for Other Purposes.

[4] OR, 3-4.

[5] Id., 1; Rollo, 4.

[6] OR, 35.

[7] Rollo, 105-120.

[8] OR, 151-154; Rollo, 72-75.

[9] Citing People v. Telio, 210 SCRA 169.

[10] Citing People v. Villanueva, G.R. Nos. 112164-65, 28 February 1996.

[11] Rollo, 55-67.

[12] Citing People v. Escato, 229 SCRA 430.

[13] People v. Matrimonio, 215 SCRA 613, 627 [1992]; People v. Lucas, 232 SCRA 537, 546 [1994]; People v. De Guzman, 265 SCRA 228, 241 [1996].

[14] TSN, 9 December 1994, 9-13, 16-19, 20-24.

[15] OR, 154-155; Rollo, 33-34.

[16] People v. Pascual, 208 SCRA 393, 399 [1992]; People v. Pamor, 237 SCRA 462, 471 [1994]; People v. Excija, 258 SCRA 424, 439 [1996].

[17] TSN, 9 January 1995, 16-17; TSN, 5 February 1996, 7.

[18] TSN, 7 February 1996, 8, 15-17.

[19] People v. Alib, 222 SCRA 517, 529-530 [1993]; People v. Leoterio, 264 SCRA 608, 615 [1996].

[20] People v. Malunes, 247 SCRA 317, 326-327 [1995]; People v. Leoterio, 264 SCRA 608, 618 [1996].

[21] TSN, 9 January 1995, 5-7.

[22] People v. Pidia, 249 SCRA 687, 703-704 [1995]; People v. Balamban, 264 SCRA 619, 631 [1996].

[23] Constitution, Art. III, Sec. 14(2).

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[24] 262 SCRA 518, 527 [1996].

[25] People v. Antido, 278 SCRA 425, 452 [1997].

[26] 267 SCRA 682 [1997].

[27] People v. Victor, 292 SCRA 186, 200-201 [1998].

[28] People v. Prades, 293 SCRA 411, 430 [1998].

[29] People v. Matrimonio, 215 SCRA 613, 634 [1992].

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