

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODRIGO CALMA Y SACDALAN, ACCUSED-APPELLANT.

G.R. No. 127126. September 17, 1998

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PER CURIAM:

This Court repeats: men who rape children, worse, their own daughters, are "filthier than the slime where they belong. Whatever punishment is imposed on them can never expiate their loathsome offense, for which forgiveness itself from a mortal court, at least, would be a sin".[1]

There is no fathoming the deluge of rape cases, often involving children, that has swamped the Court. But this particular case is by far, the most bizarre. Not just one but three young girls have been left precipitately stigmatized by the bestial violence perpetrated on them by their own father. The very person who should have protected them with his life, destroyed theirs. What strikes this Court as extremely perverse is that he spared no one, not even his daughter of the tenderest age of 5.

Accused-appellant Rodrigo Calma was charged with two (2) counts of Rape under Art. 335 of the Revised Penal Code, as amended by Sec. 11 of Republic Act No. 7659, and one (1) count of Acts of Lasciviousness under Art. 336 of the Revised Penal Code in relation to Sec. 5(b) of Art. III of Republic Act No. 7610[2], before the Regional Trial Court, 3rd Judicial Region, Malolos Bulacan, Branch 14[3] in the following three (3) separate Informations:

In Crim. Case No. 752-M-96, for Rape:

"The undersigned upon the prior sworn complaint of the offended party, fourteen (14) year old minor Annalyn Calma, accuses RODRIGO CALMA Y SACDALAN of Rape, defined and penalized under Art. 335 of the Revised Penal Code as amended by Sec. 11 of Republic Act [No.] 7659, committed as follows:

"That in between the period May 1995 to March 8, 1996, in Marilao, Bulacan and within the jurisdiction of this Honorable Court, the above-named accused, being the biological father of the offended party Annalyn Calma, with lewd designs and by means of threat and violence by arming himself with bladed weapon, did then and there willfully, unlawfully and feloniously lie and had sexual intercourse with private complainant Annalyn Calma against her will and consent.

"CONTRARY TO LAW."[4]

In Crim. Case No. 752-M-96, also for Rape:

"The undersigned upon the prior sworn complaint of the offended party, ten (10) year old minor Roselyn Calma, assisted by her mother Myrna Calma y Ignacio, accuses RODRIGO CALMA Y SACDALAN of Rape, defined and penalized under Art. 335 of the Revised Penal Code as amended by Sec. 11 of Republic Act [No.] 7659, committed as follows:

"That in between the period May 1995 to March 8, 1996, in Marilao, Bulacan and within the jurisdiction of this Honorable Court, the above-named accused, being the biological father of the offended party Roselyn

Calma, with lewd designs, did then and there willfully, unlawfully and feloniously lie and had sexual intercourse with private complainant Roselyn Calma against her will and consent.

"CONTRARY TO LAW."[5]

In Crim. Case no. 754-M-96, for Acts of Lasciviousness:

"The undersigned upon the prior sworn complaint of Myrna Calma y Ignacio in behalf of her Four (4) year old daughter Irene Calma, the offended party, accuses RODRIGO CALMA Y SACDALAN of ACTS OF LASCIVIOUSNESS defined and penalized under Art. 336 of the Revised Penal Code, in relation to Section 5 (b), Art. III of Republic Act [No.] 7610, committed as follows:

"That in between the period May 1995 to March 8, 1996, in Marilao, Bulacan and with the jurisdiction of this Honorable Court, the above-named accused, by taking advantage of his natural daughter, Four (4) year old Irene Calma, did then and there wilfully, unlawfully and feloniously with lewd designs, touched the private parts of the above-stated offended party.

"CONTRARY TO LAW."[6]

Accused-appellant pleaded not guilty to the charges.

On May 31, 1996, the three cases were jointly tried upon motion of the prosecution.

The evidence of the prosecution established that between May 1995 and March 8, 1996, accused-appellant forced himself on his two daughters, namely, Annalyn and Roselyn, born on July 11, 1981[7] and December 28, 1985[8], respectively. During the same period, accused-appellant inserted his finger into the sex organ of his youngest daughter, Irene, born on June 29, 1991[9]

At ages 15, 11 and 5 years, Annalyn, Roselyn, and Irene, respectively, testified thus:

Annalyn on the witness stand:

"A

One day by the middle of May, 1995, my father arrived home drunk [sic] and he forced me to undress myself while carrying an icepick.

"x x x

"Q.

But can you tell us the time?

"A.

It was already night time, madam.

"x x x

"Q.

And where did this incident happened [sic]?

"A.

In our bedroom, madam.

"x x x

"Q.

When you said that your father removed your panty and your short[s] and your father was only wearing his short[s] at that time, what did your father do to you if any?

"A.

He asked me to lie down on the bed, madam.

"Q.

And when you laid down on the bed, what happened next?

"A.

He approached me pointing the icepick towards me, sir.

"x x x

"Q.

And then when he approached you, what happened next?

"A.

He started to kiss me on the different parts of my body, madam.

"Q.

Specifically what part of your body did he kiss first?

"A.

My vagina, madam.

"x x x

"Q.

Did you not resist or cry or ask him the reason why he was doing that to you?

"A.

I asked him, madam.

"Q.

And what was his answer?

"A.

None, madam.

"x x x

"Q.

And after your father kissed your whole body, your breast and including your vagina that was all he did to you?

"A.

On that particular day, yes madam on that day only.

"x x x

"Q.

After that first incident, you did not tell anyone or anybody your mother and brother and your sister what your father did to you?

"A.

I did not, sir.

"Q.

Why?

"A.

Because at the very start, he had already threatened us and he told us that he would kill our mother in our presence, madam.

"Q.

And after that first incident in the middle of May, 1995, this act was never repeated again?

"A.

It was repeated again, madam.

"Q.

How many times?

"A.

For many more times, madam.

"x x x

"A.

After a week time [sic] or something like that in as much as he seem[s] not to be satisfied he inserted his sex organ [in]to mine, madam.

"Q.

Can you recall the first time your father inserted his penis inside your private parts?

"A.

No more, madam.

"Q.

You can not recall the exact date?

"A.

I can no longer recall, madam.

"X X X

"Q.

Now, when you were left alone with your father, do you recall what happened if any?

"A.

Yes, madam.

"X X X

"A.

First he look [sic] our main door and then he ordered me to get inside our bedroom, madam.

"Q.

After he instructed you to get inside your bedroom, what happened next?

"A.

He ordered me or instructed me to undress myself, madam.

"Q.

Did you actually remove your clothes?

"A.

Yes, madam because I was frightened then.

"Q.

How about your father, what happened to his clothes then?

"A.

He likewise removed his short pants, madam.

"Q.

So, both of you were totally naked?

"A.

Yes, madam.

"Q.

After you were both totally naked, did [sic] you kindly tell us what happened next?

"A.

He instructed me to lie down on [the] bed, madam.

"Q.

After you laid down on [the] bed, what happened next?

"A.

He placed himself on top of me, madam.

"Q.

And when he laid on top of you, do you recall what happened next?

"A.

Yes, madam.

"Q.

What was that?

"A.

He was making a push and pull motion, madam.

"x x x

"Q.

When you say that he was likewise making this push up motion, did you notice anything else?

"A.

He inserted his penis on [sic] my vagina, madam.

"Q.

How do you know it was his penis that was inserted on [sic] your vagina?

"A.

Because I saw it, madam.

"Q.

When he inserted his penis inside your vagina, what did you feel?

"A.

I cried because it was painful, madam.

"Q.

Did you resist or fought [sic] back to [sic] what your father was doing to you?

"x x x

"SP BALAWAG:

"Q.

What did you do if any?

"A.

I cried and cried and when I was struggling to free myself, he pointed again the icepick on [sic] me, madam.

"Q.

And can you tell us for how long did this push up movements [which] your father was doing while his penis was inserted in your vagina lasted [sic]?

"A.

For less than five (5) minutes, madam.

"Q.

After that what happened?

"A.

He stood up and seated himself on top of the bed, madam.

"Q.

What did you see when your father suddenly stood [sic] up and sit on top of the bed?

"x x x

"A.

He took hold and played with his sex organ or penis, madam.

"Q.

After playing [with] his sex organ, what happened next?

"A.

Something came out of his penis, madam.

"Q.

Would you kindly describe to us what you saw coming out from his penis?

"A.

A sticky substance, madam.

"Q.

Why do you know that this sticky substance came out from the penis of your father?

"A.

Because he was showing that to me, madam. He even told me that that substance was the one introducing [sic] baby, madam.

"x x x

"Q.

And after this first sexual abuse committed by your father on you, you never relayed this incident to anyone?

"A.

Yes, madam I did not.

"Q.

Why was this?

"A.

As I have stated a while ago, he was threatening us. He was threatening me and he further stated that that will include my mother and even my other sister and brother, madam.

"Q.

You stated earlier that this sexual abuse was repeatedly done by your father?

"A.

Yes, madam.

"x x x

"A.

When my mother was not yet around whenever he likes it.

"x x x

"Q.

During the time that you have or you were repeatedly raped or your father have [sic] sexual intercourse with you, will you kindly tell us the positions your father did?

"A.

Sometimes I am lying on my back. Sometimes I am on my side that is all.

"x x x

"SP BALAWAG:

"Q.

In all those instances that you were repeatedly abused by your father notwithstanding the return of your mother, you never told anyone what was [sic] your father was doing to you?

"A.

I did not, madam.

"Q.

Why?

"A.

Because I am afraid of his threat and I love very much my family.

"x x x

"Q.

Now, madam witness, do you recall the last time when your father sexually abused you?

"A.

Yes, madam.

"Q.

When was that?

"A.

March 3, Sunday in the morning 1996, madam.

"Q.

In other words, madam witness since the middle of May, 1995, up to March 3, 1996, this sexual abuse committed by your father lasted up to one (1) year?

"A.

Yes, madam."[10]

Roselyn on the witness stand:

"Q.

Can you tell us, Madam Witness, what grade were you in and how old were you at the time you were first sexually molested by your father?

"A.

I was then in Grade 2 and I was only 8 years old then, madam.

"x x x

"Q.

In other words, Madam Witness, the first time you were sexually abused by your father, you were left alone with him?

"A.

Yes, madam.

"Q.

And you also mentioned earlier that you were first sexually abused by your father in your living room, can you tell us who brought you there in the living room?

"A.

It was he, madam.

"x x x

"Q.

Now, when your father or the accused led you in the living room of your house alone and you were alone with him, can you recall what happened, if any?

"A.

First, he instructed me to remove my shorts but I didn't want and what he did is that he pointed an ice pick to [sic] me, madam.

"x x x

"Q.

When you refused at first to remove your shorts and then the accused pointed an ice pick at you, can you recall what happened next?

"A.

It was he who removed my shorts, madam.

"Q.

In what particular part of your body was the ice pick pointed?

"A.

On my neck, madam. x x x

"Q.

After your father removed your shorts, what happened next, if any?

"A.

He brought out his sex organ from his short, he lifted up one of my feet and make [sic] me lie down on my back and he placed himself on top of me, madam.

"Q.

What part of your leg was raised at that time?

"A.

My right leg, madam.

"Q.

In other words, while you were lying down, the accused lifted your right leg and then he went on top of you?

"A.

Yes, madam.

"x x x

"PROS. BALAUAG:

"Q.

What happened next after your father laid on top of you?

"A.

He was actually making a push and full [sic] motions [sic] (kinakabayo).

"x x x

"PROS. BALAUAG:

"Q.

Now, after your father went on top of you, what did he do next, if any and made [sic] that "kinakabayo"?

"A.

He pulled out his sex organ and then played with it, madam.

"Q.

Where did he pulled [sic] out his sex organ?

"A.

From my sex organ, madam.

"Q.

In other words, madam Witness, your father inserted his sex organ or penis in your vagina?

"A.

Yes, madam.

"Q.

Can you tell what you felt at that time while the penis of your father was inserted in your vagina?

"A.

It was painful, madam.

"Q.

Did you not tell him about it?

"A.

I told him about that, madam.

"Q.

What was his responds [sic]?

"A.

None, madam.

"x x x

"Q.

After your father pulled out his sex organ or his penis, can you recall what happened next or what did he do with it, if any?

"A.

After my father had pulled out his sex organ from my sex organ he played with it and something whity [sic] substance came out, madam.

"Q.

Did you actually see that white [sic] substance coming out from your father's penis?

"A.

Yes, madam, because he was then in front of me.

"x x x

"Q.

Now, did you not tell anyone of what had happened to you?

"A.

I did not, madam.

"Q.

Why not, madam witness?

"A.

I am afraid, madam, because he told me that if I do so, he would kill my mother.

"x x x

"Q.

Now, the second time you were sexually abused by your father, can you tell us where did it happen?

"A.

In the same hut, madam.

"Q.

In what particular portion of the house?

"A.

Also, in the living room, madam.

"x x x

"Q.

Now, you mentioned earlier that the second time you were sexually abused by your father, it happened in the living room, can you tell us what your father did to you at that time?

"A.

The same as in the first occasion, he instructed me to remove my clothes, madam.

"Q.

In other words, madam witness, what you are trying to say to us right now was that the second time you were sexually abused by your father, it was like the first incident when you were sexually abused?

"A.

Yes, madam.

"X x x

"A.

The same as in the first occasion when I was abused by my father. He first brought out his sex organ from his shorts and then allowed me to lie down on my back, then raised my right leg and then he inserted his sex organ to [six] my sex organ, madam.

"X x x

"Q.

When was that, the last time you were sexually abused by your father?

"A.

March 8, 1996, madam, because after that date it was then the birthday of my father.

"Q.

In other words, the birthday of the accused is March 9.

"A.

Yes, madam.

"X x x

"A.

I was about to place my bag inside that bedroom and I have to change clothes while my father followed me inside.

"Q.

Madam Witness, where did you came [sic] from on that particular date?

"A.

I came from school, madam.

"Q.

When your father followed you inside the bedroom, can you recall what happened next, if any?

"A.

Yes, madam.

"Q.

What happened?

"A.

He instructed me to lie down on my back and instructed me further to remove my shorts, madam.

"Q.

Did you obey his orders?

"A.

No madam, I did not.

"Q.

What happened next when you refused to removed [sic] your shorts?

"A.

He pointed an ice pick to [sic] me, madam.

"Q.

The same ice pick he pointed at you on the first occasion you were sexually abused by your father?

"A.

No madam, it is different.

"Q.

How can you tell that it was a different ice pick that he used?

"A.

I said that it was different ice pick because the first ice pick he used on me before, I kept it away, so what he did, he made another ice pick which is quite longer.

"Q.

Did you actually see your father making that particular ice pick?

"A.

Yes, madam.

"x x x

"Q.

Now, after your father placed some oil in [sic] his penis, what did he do next, if he did anything?

"A.

He lifted again one of my legs and then placed himself on top of me, madam.

"Q.

In other words, madam witness, the third time you were sexually abused by your father, he lifted again your right legs [sic] but this time he put some oil in [sic] it before he inserted it in your vagina?

"A.

Yes, madam.

"Q.

And after inserting his penis inside your vagina, what happened next, if any?

"A.

He removed his sex organ or pulled out his sex organ and then played with it and sticky substance came out of it."[11]

Irene on the witness stand:

"PROS. AGARAN:

"Q.

Irene, kilala mo ba si Mama?

"A.

Opo.

"x x x

"Q.

Si Papa kilala mo rin?

"A.

Opo.

"x x x

"Q.

Irene, mahal mo ba si Mama?

"A.

Opo.

"Q.

Eh, si Papa, mahal mo rin ba?

"A.

Hindi na po.

"Q.

Bakit hindi mo na mahal si Papa?

"A.

Kasi po ang kamay niya ay pinapasok sa penching ko.

"Q.

Pakituro mo nga kung ano 'yong sinasabi mong penching?

"AT THIS JUNCTURE, THE WITNESS IS CRYING. AND WITNESS [IS] TOUCHING HER SEX ORGAN.

"Q.

Ano 'yong kamay na ipinapasok doon sa penching mo, sabihin mo nga anak kung ano 'yon? Nasaan 'yong daliring sinasabi mo, ituro mo kung anong daliri ang ipinapasok ng iyong Papa sa penching mo?

"WITNESS TOUCHING HER RIGHT AND MIDDLE FINGER.

"Q.

Nasaan kayo pagka pinapasok ni Papa yong daliri niya sa penching mo?

"A.

Nasa kama po.

"Q.

Anong suot mo pag nasa kama kayo tapos pinapasok ni Papa 'yong daliri niya sa penching mo? Nasaan ka?

"A.

Nasa amin po.

"Q.

Saan 'yon amin na sinasabi mo, Irene saan anak?

"PROS. AGARAN:

The witness is now crying, your Honor.

"ATTY. JOSON:

Scratching only, your Honor.

"PROS. AGARAN:

"Q.

Pag ipinapasok ang daliri ni Papa sa penching mo, ano ang nararamdaman mo?

"A.

Masakit po.

"Q.

Maliban sa pagpasok ng daliri ng Papa sa penching mo, ano pa ang ginawa sa iyo?

"A.

No answer.

"PROS. AGARAN:

She refused to answer, your Honor, but she kept on crying.

"COURT:

"Q.

Bakit ka umiiyak? Hindi naman kami nagagalit sa iyo.

"PROS. AGARAN:

"Q.

Meron ka bang pinagkuwentuhan ng ginawa ng Papa mo ang pagpasok sa penching mo?

"A.

Wala po.

"Q.

Kahit kanino?

"A.

Wala po.

"Q.

Kay Mama, hindi mo kinuwento kay Mama?

"A.

Hindi po.

"Q.

Bakit hindi mo kinuwento kay Mama?

"A.

Eh, wala siya.

"Q.

Nasaan si Mama noon nuong ipasok niya ang daliri niya sa penching mo?

"A.

Kina Lola po.

"Q.

Hindi na ba bumalik si Mama sa bahay?

"A.

Bumalik po.

"Q.

Eh, bakit hindi mo ikinuwento?

"A.

Gabi na po.

"Q.

Ibig mong sabihin pag gabi na si Mama natutulog ka na?

"A.

Opo.

"Q.

Wala kang talagang pinagkwentuhan?

"A.

Wala po.

"Q.

Hindi mo ikinuwento maski na kina Ate?

"A.

Kay Roselyn po.

"Q.

Ano ang sinabi mo kay Ate Roselyn?

"PROS. AGARAN:

The witness refused to answer, your Honor. That will be all for the witness, your Honor.

"COURT:

"Q.

Ituro mo nga kung sino ang nagpapasok ng daliri sa penching mo?

"A.

WITNESS POINTING TO A PERSON IN THE COURTROOM WHO STOOD UP AND GAVE HIS NAME AS RODRIGO CALMA.

"PROS. AGARAN:

"Q.

Sino siya?

"A.

Papa ko.

"COURT:

Cross?

"ATTY. JASON:

Yes, your Honor. With the kind permission of this Honorable Court.

"COURT:

Proceed.

"ATTY. JASON:

"Q.

Irene, is it not a fact that your mother and your father frequently quarrel with each other?

"A.

Yes, sir.

"Q.

And in fact, because of that frequent trouble your mother was angry [sic] to your father?

"A.

Yes, sir.

"Q.

And because your mother was angry she told you to testify against your father?

"PROS. AGARAN:

Your Honor, at her age she is incompetent to testify on those matters.

"COURT:

Let the witness answer.

"A.

No, sir.

"Q.

Considering that your mother did not instructed [sic] you to file action against your father, my question to you Irene is, who is the person who told you that something wrong was done to you by your father?

"A.

None, sir.

"COURT:

"Q.

Di ba natutulog ka nuong ilagay ang kamay niya sa penching mo?

"A.

No, your Honor.

"Q.

Anong naramdaman mo nong ilagay iyon?

"A.

Painful, your Honor.

"Q.

Ano pa?

"No answer.

"ATTY. JOSON:

No further question, your Honor." [12]

Accused-appellant denied his daughters' accusations. He charged that Myrna Ignacio, his common law wife and mother of his children, coached his daughters to lie. He claimed that he had seriously hurt her in the past, twice by electrocution on suspicion of infidelity. He also accused her of using the criminal cases to force him to waive his ownership rights over their house and lot in her favor.

Seeking to help accused-appellant, his mother, Catalina Calma, his neighbor, Gloria Ceraus, his mother's laundrywoman, Eugenia Lontoc, his sister-in-law, Lolita Calma, family friend, Rosalie Ofrecio, and a confidante of Annalyn, Larry Laurora, attested to the close family ties of the Calmas. They testified that accused-appellant's daughters, especially Annalyn, showed much affection towards their father. Catalina Calma, Lolita Calma and Larry Laurora even insinuated that Annalyn was in love with her father and was seducing him.

On September 25, 1996, the trial court convicted the accused on all three (3) charges. It ruled:

"The defense's position that the charges were fabricated and that the private complainants were coached is untenable. A teenage unmarried lass would not ordinarily file a rape complaint against anybody much less her own father if it were not true (*People v. Matrimonio*, 215 SCRA 613). A daughter, especially one of tender age would not accuse her own father of this heinous crime had she really not have been aggrieved (*People v. Dusohan*, 227 SCRA 87; *People v. Magpayo*, 226 SCRA 13). In their childhood innocence and naivete they could not have concocted the story of how they were wantonly ravished and sexually assaulted (see *People v. Magallanes*, 218 SCRA 109; *People v. Joya*, 227 SCRA 9).

"Neither is there no [sic] merit in the accused's argument that the abuses if true could not have been endured by the private complainants for almost a year without telling anyone. It is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapist's threats on their lives. Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of the witness if such delay is satisfactorily explained (*People v. Errojo*, 229 SCRA 49 x x x). The fact that there was no outcry from the offended party is immaterial in the rape of a child below twelve years old (*People v. Ylarde*, 224 SCRA 405). Also, the precise date when complainant was sexually abused is not an essential element of the offense (*People v. Ocampo*, 206 SCRA 223).

"The defense also argues that there was no external evidence of the use of force. In the case of *People v. Coloma* it has held that "previous passivity of a daughter in allowing her father to have carnal knowledge of her for eight (8) years is not a valid defense against unconsented intercourse. The kind of force or violence, threat or intimidation as between father and daughter need not be of such nature and degree as would be required in other cases, for the father in this particular instance exercises strong moral and physical influence and control over his daughter (*People v. Coloma*, 222 SCRA 255). In a rape case committed by a father against his own daughter the father's moral ascendancy and influence over the latter substitutes for violence and intimidation (*People v. Matrimonio*, 215 SCRA 613).

"It was held in *People v. Ignacio*, 233 SCRA 1, that courts may take judicial notice of the interesting fact that among poor couples with big families living in small quarters, copulation does not seem to be a problem despite the presence of other persons around them. Rape can be committed even if the victim is sleeping on the same bed with others (*People v. Villorente*, 210 SCRA 647). Thus it was not impossible for the accused to

commit the abuses on his daughters simply because they were sleeping on the same bed.

"It was also argues [sic] that the extent of the injuries sustained by the two younger complainants are not enough to support the charges. Suffice it to say that healed lacerations in the hymen do not negate rape; neither does the absence of spermatozoa in the vaginal canal (People v. Liquiran, 228 SCRA 62; People v. Magallanes, 218 SCRA 109). Even if there were no lacerations of the hymen this fact alone does not necessarily mean that there was no rape. The merest introduction of the male organ into the labia of the pudendum is sufficient. The mere penetration of the penis by the entry thereof into the labia majora of the female organ even without rupture of the hymen suffices to warrant a conviction for rape (People v. Sanchez, 250 SCRA 14). Annalyn and Roselyn testified that there was penetration and that it was very painful. The pain could be nothing but the result of penile penetration, sufficient to constitute rape (People v. Sanchez, supra).

"The mother of the accused, as well as his sister-in-law imply (sic) that an amorous relationship could exist between the accused and Annalyn, and such is one of the theories of the defense. However, where the accused adopted the theory that the victim consented to his sexual desires, the sexual act itself is deemed admitted except as to consent [but] x x x as contrary evidence showed the victim sustained physical injuries consistent with her claim that she was sexually abused without her consent (People v. Saluna, 226 SCRA 447). The charge that the complainant in a rape case has loose morals must be supported by strong evidence (People v. Coloma, 222 SCRA 255). Such a claim could only lead this court to believe that the defense would try to exculpate the accused by blaming the victim, which this court is not inclined to do.

"The accused imputes false motive in the filing of these case[s] on the part of Myrna. 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 v. Ching, 240 SCRA 267; People v. Ignacio, 233 SCRA 1). No mother would stoop so low as to subject her daughter to physical hardship and shame concomittant to a rape prosecution just to assuage her own hurt feelings (People v. Rejano, 237 SCRA 627).

"A violation of a woman's chastity becomes doubly repulsive where the outrage is perpetrated on one's own flesh and blood, for the culprit is reduced to a level lower than a beast (People v. Dusohan, 227 SCRA 87). Because of the acts of the accused the private complainants have been denied their right to grow up and discover the wonders of womanhood in the natural way, and an award of moral indemnification in the amount of P50,000.00 is proper (People v. Escoto, 229 SCRA 430; People v. Mejorada, 224 SCRA 857), as well as an award of exemplary damages as correction for the public good (People v. Matrimonio, 215 SCRA 613), in the amount of P25,000.00." [13]

Accordingly, accused-appellant was meted out the following penalties:

"WHEREFORE, premises considered, judgment is hereby rendered:

"In Criminal Case No. 752-M-96

"Finding the accused Rodrigo Calma y Sacdalan GUILTY beyond reasonable doubt of the crime of rape and sentencing him to the penalty of death to be carried out in accordance with law; and to indemnify Annalyn Calma in the amount of P50,000.00, to pay her the amount of P50,000.00 as moral damages, the amount of P25,000.00 as exemplary damages;

"In Criminal Case No. 753-M-96

"Finding accused Rodrigo Calma y Sacdalan GUILTY beyond reasonable doubt of the crime of rape and sentencing him to the penalty of death to be carried out in accordance with law; and to indemnify Roselyn Calma in the amount of P50,000.00, to pay her the amount of P50,000.00 as moral damages and the amount of P25,000.00 as exemplary damages; and

"In Criminal Case No. 754-M-96

"Finding the accused Rodrigo Calma y Sacdalan GUILTY beyond reasonable doubt of the [crime of] acts of lasciviousness under Article 336 of the Revised Penal Code and R.A. [No.] 7610, and sentencing him to the penalty of reclusion temporal in its medium period, to indemnify Irene Calma in the amount of P50,000.00, to pay P50,000.00 as moral damages and P25,000.00 as exemplary damages.

"SO ORDERED." [14]

On automatic appeal because of its twin sentences imposing the death penalty, the foregoing decision of the trial court is now before us.

In his Brief dated October 21, 1997, accused-appellant interposed a single error, thus:

"THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIMES CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT." [15]

We find on record overwhelming evidence of the guilt of accused-appellant. The testimony of the three victims, his own daughters, withstood the test of cross-examination. They spontaneously, clearly and credibly spoke of the details of their defilement. The defense did not dispute the time, the place, the manner and the frequency of the sexual abuses. Neither did the defense show that their hymenal lacerations, as found by Dr. Jesusa Nieves Vergara, the medico-legal officer who examined them, were the results of other causes. Dr. Vergara testified, thus:

"x x x

Q.

At around 11:30 in the morning of that day, do you recall having physically examine [sic] the person[s] of Roselyn Calma, Irene Calma and Annalyn Calma?

A.

Yes, sir.

x x x

SP BALAUAG:

Q.

You stated that you conducted a physical examination on the person of Annalyn Calma on May 3, 1996, is [sic] the findings of your examination was [sic] also reduced in writing?

A.

Yes, madam.

Q.

I am showing to you medico legal report No. M-647-96, what relation has this medico legal report to the one you stated you executed?

A.

This is the original medico legal report No. M-647-96 which I prepared.

x x x

Q.

We are marking the same as our Exhibit K, and that the signature of Dr. Vergara be bracketed and be marked as Exhibit K-1. x x x You stated in your genital findings that "on separating the same disclosed an elastic, fleshy-type hymen with shallow healed lacerations at 3 and 5 o'clock and deep healed lacerations at 8 and 9 o'clock positions." [I]n layman's language, can you tell us wat this [sic] genital findings means [sic]?

A.

The numbers here, 3, 5, 8 and 9 o'clock will just indicate the positions of the lacerations. So, since the hymen is circular in appearance, it is being correlated to the face of the watch when we say the laceration is 3:00 o'clock, it means that the laceration or it occupies the number in the clock. The same goes with the 5, 8 and 9 o'clock. By shallow laceration, it means that it does not exceed more than 50% or more than half of the width of the hymen and by deep laceration, it exceed [sic] more than 50% or more than 1/2 of the width of the hymen and by healed laceration, it means that the edges of the laceration has already healed showing reaction like swelling, redness or contusion on the area.

x x x

SP Balauag:

Q.

You concluded in your conclusion that the subject is in non-virgin state physically. Can you kindly explain how you were able to conclude that the subject is in a non-virgin state?

A.

The findings in the hymen is [sic] a healing laceration.

x x x

Q.

Dr., can you tell us what might have cause [sic] this laceration in the hymen you found on [sic] Annalyn Calma?

A.

Forcible entry of a hard blunt object.

x x x

COURT:

x x x

Q.

What was the cause of your conclusion or findings that the victim is no longer a virgin?

A.

Forcible entry of a hard blunt object can be caused by an insertion of a male sex organ.

SP BALAUAG:

Q.

On May 6, 1996, did you examine the person of Rosallyn [sic] Calma?

A.

Yes, madam.

Q.

After conducting your physical examination was [sic] your findings reduced into writing?

A.

Yes, madam.

x x x

Q.

[Let] the signature over the typewritten name Jesusa Vergara be bracketed and be marked as our Exhibit L-1 x x x. You stated in your findings that on the genital [area]:

‘There is absence of pubic hair. Labia majora are full, convex and gaping with th [sic] pinkish labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with shallow healed lacerations at 3 and 9 o’clock positions. External vaginal origice [sic] admits tip of the examiner’s smallest finger.’ Now in layman’s language, Doctor, can you tell us what this [sic] genital findings means [sic]?

A.

That I found two (2) lacerations on the hymen, positions 3 and 9 o’clock positions. [B]oth lacerations were shallow healed lacerations.

Q.

Now, Doctor, there appears a conclusion [where] you said [in the] medico legal report that the subject is in a non-virgin state physically, can you tell us the basis of your conclusion?

A.

The basis for saying this is my findings on the hymen revealing the healed lacerations.

Q.

This laceration you found on the hymen [of] the private complainant Rosallyn [sic] Calma, can yoy [sic] inform this Honorable Court what or [sic] might have cause [sic] the said lacerations?

A.

Forcible entry of a hard blunt object which can be a form of an erected sexual organ.

Q.

On May 3, 1996, do you remember having physically examine [sic] the person of Irene Calma?

A.

Yes, madam.

Q.

Was [sic] your findings after you physically examine [sic] the person of Irene Calma reduced into writing?

A.

Yes, madam.

x x x

Q.

I forgot, we are marking the findings of the doctor as Exhibit L-3, your Honor for purposes of identification we are marking the medico legal report 649-M-96 as our Exhibit M and the signature over the typewritten name Dr. Jesusa Vergara be bracketed and be marked as our Exhibit M-1. x x x Doctor, in this [sic] findings regarding the four year old private complainant Irene Calma you stated in your findings that there are lacerations found in the hymen of the four (4) year old child, can you tell us in layman's language what this means?

A.

In this particular case, there were two (2) lacerations noted on the hymen of the victim. [B]oth were healing lacerations one shallow healing laceration 3 o'clock and another, deep laceration position 3 o'clock.

Q.

Can you tell us the basis of your conclusion that the victim Irene Calma is also [in] a non-virgin state?

A.

My basis for saying this [is] the findings on the hymen revealing lacerations.

Q.

In this particular case where the victim or the private complainant is four years old, will you tell us what might have caused the laceration you found in the hymen of Irene Calma?

A.

Forcible entry of a hard blunt object."[16]

At most, during cross-examination, the defense got Dr. Vergara to concede that hymenal lacerations can also be caused by a fall on a sharp object. The defense, however, failed to establish that the three victims had, on specific occasions, met an accident of that nature. Thus goes the cross-examination of Dr. Vergara:

"ATTY. JOSON:

Q.

Madam witness, x x x you stated that that [sic] x x x the healed laceration might be caused by a blunt instrument or an erected adult penis. Now, madam witness, aside from adult male penis, what other factor that might caused [sic] lacerations in the hymen which falls under the category of a hard blunt [sic] object?

A.

Insertion of the finger provided that diameter of the finger is greater than the diameter of the opening of the vagina, [sic].

Q.

Can it be the finger of the subject person herself?

I withdraw that.

x x x

Q.

In fact, aside from the erected male penis, finger, what are the other factors or things that might cause laceration in the hymen?

A.

A fall against a hard sharp object, sir.

Q.

Doctor, is it possible considering the young age of the subject person by strenuous exercise and activities may the same caused [sic] laceration of the hymen?

A.

No, sir there has to be a direct trauma on the hymen, sir.

Q.

How about riding on a bicycle?

A.

No, sir.

Q.

Doctor, you also stated healing laceration, from the time of the examination what is the probable time or what is the period of time wherein you can still consider a laceration a healing laceration?

A.

Less than seven (7) days per examination, sir.

Q.

To be considered a healed laceration, the examination must be conducted within seven days?

A.

More than seven (7) days.

Q.

Healing laceration?

A.

For healed laceration, it should be more than seven (7) days, for heal[ing] lacerations less than seven (7) days.

x x x

COURT:

Q.

Doctor, can you determine Dr. when was the actual date wherein the victim lost their virginity?

A.

For the exact date, I can not determine but I can only approximate, but my findings are compatible per their allegations that the incident happened a year [before my examination]."[17]

Accused-appellant next submits that the evidence of the prosecution should not be given credence by this Court because of their inherent improbabilities. He pleads this Court to consider his daughters to have lied under oath because:

1. Annalyn and Roselyn both testified that he always withdrew his penis and ejaculated outside them, but such self-control and willpower is impossible for a man who lusted even for his own daughters.[18]
2. His daughters did not behave like rape victims. They continued to be close and affectionate towards him, hugging and kissing him in public. They always slept together in one room. They continuously attended their classes and even got high grades.[19]
3. His daughters should have died or suffered some serious physical injury if it were true that his penis forcefully penetrated their vaginas.[20]

All these, accused-appellant submits, cast reasonable doubt on his guilt.

The law presumes that an accused is innocent and this presumption stands until it is overturned by competent and credible proof. It is incumbent upon the prosecution to establish the guilt of the defendant beyond a reasonable doubt. The reasonable doubt should necessarily pertain to the facts constitutive of the crime charged.[21] Discrepancies that touch on significant facts are crucial on the guilt or innocence of an accused.[22] Conversely, inconsistencies and discrepancies in details which are irrelevant to the elements of the crime are not grounds for acquittal.[23] The rule of *falsus in uno, falsus in omnibus* has never been regarded as positive, mandatory, or inflexible.[24]

Surmises and conjectures have no place in a judicial inquiry and are especially anathema in a criminal prosecution.[25] In a criminal prosecution a reasonable doubt can be created by many things but to be sufficient to prevent a conviction, it must arise from the evidence adduced or from the lack of evidence, and can arise from no other legitimate source.[26] While no test definitively determines which is and which is not considered reasonable doubt under the law, it must necessarily involve genuine and irreconcilable contradictions based, not on suppositional thinking, but on the hard facts constituting the elements of the crime. It is not mere possible doubt, because everything relating to human affairs is open to some possible or imaginary doubt.[27] It should not be vague, speculative or whimsical, but intelligent, reasonable and impartial and based on a careful examination and conscious consideration of all the evidence in the case.[28] A reasonable doubt is not such a doubt as any man may start by questioning for the sake of a doubt; nor a doubt suggested or surmised without foundation in facts or testimony, for it is possible always to question any conclusion derived from testimony, but such questioning is not what is reasonable doubt. Rather, it is that state of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the judge in that condition that he cannot say that he feels an abiding conviction to a moral certainty of the truth of the charge.[29] Absolute certainty is not demanded by the law to convict of any criminal charge but moral certainty is required, and this certainty must attend every proposition of proof requisite to constitute the offense.[30] Absolute, mathematical, or metaphysical certainty is not essential, and besides, in judicial investigation, it is wholly unattainable. Moral certainty is all that can be required.

In the instant case, accused-appellant exhorts this court to consider the lack of internal ejaculation and the absence of any injury on the part of the victims, which were testified to by the prosecution witnesses themselves, and their continuous show of affection towards their father, as testified to by the defense witnesses, as indicia of reasonable doubt warranting his acquittal. They lied, argues accused-appellant, because their testimony is improbable, if not

impossible, and their affectionate behavior towards him, their alleged rapist, was a contradiction in terms.

We agree with the Solicitor General that these contentions are conjectural. On the charge that the narrations of the victims were fabricated for the purpose of evading the questions as to why no spermatozoa was found in them during the physical examinations and why they did not get pregnant, the Solicitor General correctly noted that Annalyn and Roselyn were last sexually abused by appellant in March 1996 while the physical examinations were conducted on May 3, 1996 or almost two (2) months thereafter. Hence, even assuming that he ejaculated while they had intercourse, the spermatozoa would have been washed off by May 3, 1996, not to mention that the lifetime of spermatozoa definitely does not run to two (2) months. In any event, the presence or absence of spermatozoa in the vagina is not even determinative of the commission of rape because a sperm test is not a *sine qua non* for the successful prosecution of a rape case.[31] The important element in rape is penetration of the pudenda and not emission of seminal fluid.[32]

The Court is also not impressed by accused-appellant's claim that he could not have raped Annalyn and Roselyn because they continued to be close to him, i.e., they still hugged and kissed him in public and continued to sleep with him in one room. They were also allegedly able to continue attending their classes and obtain good grades at the time they were supposedly molested by him.

It was Catalina Calma, mother of accused-appellant, , who testified about Annalyn's and Roselyn's supposed show of affection towards him and their supposed normal life during that trying period. But Catalina's testimony is hard to believe. Annalyn herself testified that at that time, she was cutting classes and in school, her classmates saw her crying at the library.[33] Roselyn, on her part, testified that she was greatly bothered by what appellant had done to her and after the case was filed, she felt at peace and was able to continue with her studies.[34]

There is also nothing commendable in accused-appellant's contention that the forceful insertion of a normal-size adult male penis into the vagina of girls of victims' ages would have required hospitalization and medical attention. Again, we sustain the Solicitor General's argument that full penetration of the vagina is not necessary to constitute the consummated crime of rape. It is settled that the mere entry of the penis into the labia majora of the female organ, even without rupture of the hymen, suffices to warrant a conviction of rape.[35]

The arguments of accused-appellant are premised on the misconception that reasonable doubt is anything and everything that removes a statement from the matrix of certitude. Were we to agree with him and treat every unlikely or uncommon trait characterizing a person, each strange or unusual event in the occurrence of a crime, or just any unexplained, irregular or dysfunctional behavior on the part of the accused or his victims, as basis for reasonable doubt, no criminal prosecution would prevail. It bears repeating that even inconsistencies and discrepancies in the prosecution evidence, unless treating of the elements of the crime, would not necessarily bring about a judgment of acquittal. In this case, there is not even any inconsistency or discrepancy to speak of. Accused-appellant denied criminal liability by simply insisting that his daughters, with coaching from their mother, lied on the witness stand. But during cross examination, they never flinched in their testimony. They spoke in simple, direct words customary of children of their ages, and they maintained their testimony amidst warnings[36] by the court and the defense counsel that their father may be meted out the death penalty if found guilty of the crimes that they were charging him with. Significantly, their testimony was corroborated by the medical findings of vaginal lacerations on all three victims and their non-virgin state.[37] Neither may any of the defense evidence be attributed with having materially negated the positive testimony of accused-appellant's daughters regarding their defilement in the hands of their father. The defense witnesses may have testified that they remained affectionate towards their father and continued to earn high grades in school, but they denied these statements and countered that they had cut classes and were sometimes seen crying in the library by some of their classmates.[38] All things considered, we find the evidence against the accused-appellant established his guilt

beyond reasonable doubt.

WHEREFORE, the appeal is HEREBY DENIED, and the judgment of conviction rendered by the Regional Trial Court, 3rd Judicial Region, Malolos Bulacan, Branch 14, finding Rodrigo Calma y Sacdalan guilty beyond reasonable doubt for two (2) counts of Rape under Art. 335 of the Revised Penal Code, as amended by Sec. 11 of Republic Act No. 7659, and one (1) count of Acts of Lasciviousness under Art. 336 of the Revised Penal Code in relation to Sec. 5(B) of Art. III of Republic Act No. 7610, is AFFIRMED with the slight modification that the civil indemnity in each of the three offenses is increased to P75,000.00 in accordance with the latest jurisprudence^[39] on the matter. Accused-appellant RODRIGO CALMA Y SACDALAN is hereby sentenced:

In Criminal Case No. 752-M-96

To the penalty of death to be carried out in accordance with law; and to indemnify Annalyn Calma in the amount of P75,000.00, and to pay her the amount of P50,000.00 as moral damages and P25,000.00 as exemplary damages;

In Criminal Case No. 753-M-96

To the penalty of death to be carried out in accordance with law; and to indemnify Roselyn Calma in the amount of P75,000.00, and to pay her the amount of P50,000.00 as moral damages and P25,000.00 as exemplary damages; and

In Criminal Case No. 754-M-96

To the penalty of reclusion temporal in its medium period; and to indemnify Irene Calma in the amount of P50,000.00, and to pay P50,000.00 as moral damages and P25,000.00 as exemplary damages.

Four (4) Members of the Court, although maintaining their adherence to the separate opinions expressed in *People v. Echegaray*^[40] that R.A. No. 7659 insofar as it prescribes the penalty of DEATH 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.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power. No pronouncement as to costs.

SO ORDERED.

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

[1] *People v. Desuyo*, 164 SCRA 210, 214-215 (1988).

[2] "Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period."

[3] Presided by Judge Roland B. Jurado.

[4] Information dated May 24, 1996, Rollo, p. 5.

- [5] Information dated May 24, 1996, Rollo, p. 8.
- [6] Information dated May 24, 1996, Rollo, p. 10.
- [7] Birth Certificate of Annalyn I. Calma, Original Records, p. 19-A.
- [8] Birth Certificate of Roselyn I. Calma, Original Records, p. 19.
- [9] Birth Certificate of Irene Ignacio, Original Records, p. 20.
- [10] TSN dated July 29, 1996, pp. 95-120.
- [11] TSN dated August 12, 1996, pp. 8-19.
- [12] TSN dated August 12, 1996, pp. 58-64.
- [13] Decision of the Regional Trial Court, pp. 8-10, Rollo, pp. 27-29.
- [14] *Id.*, p. 10, Rollo, p. 29.
- [15] Accused-Appellant's Brief, p. 1, Rollo, p. 47.
- [16] TSN dated August 26, 1996, pp. 9, 14-29.
- [17] *Id.*, pp. 30-35, 39.
- [18] Accused-appellant's Brief, pp. 8-9, Rollo, pp. 54-55.
- [19] *Id.*, p. 13, Rollo, p. 59.
- [20] *Id.*, pp. 13-15, Rollo, pp. 59-61.
- [21] *People v. Aguilar*, 222 SCRA 394, 408 (1993).
- [22] *People v. Salangga and Lopez*, 234 SCRA 407, 417 (1994).
- [23] *People v. Lagmay* 215 SCRA 218, 226 (1992).
- [24] *People v. Godoy*, 250 SCRA 676, 718 (1995).
- [25] *People v. Furugganan*, 193 SCRA 471, 480 (1991).
- [26] 23 C.J.S., Sec. 910, pp. 596-597.
- [27] *People v. Umali*, CA G.R. No. 02980-CR, April 26, 1965.
- [28] Words and Phrases, *supra*, p. 489, citing *State v. Brown*, Del., 80 A. 146, 150, 2 Boyce, 405.
- [29] *Id.*, p. 488, citing *Bridgeman v. U.S.*, 140 F. 577, 592, 72 C.C.A. 145.
- [30] *United States v. Lasada*, *supra*, p. 97.
- [31] *People v. Paciente*, 210 SCRA 86, 94 (1992).
- [32] *People v. Bondoy*, 222 SCRA 216, 228 (1993).
- [33] TSN dated July 29, 1996, p. 159.
- [34] TSN dated August 12, 1996, p. 53.
- [35] *People v. Bacalzo*, 195 SCRA 557, 564 (1991).

[36] TSN dated July 29, 1996, p. 173; TSN dated August 12, 1996, p. 46.

[37] Testimony of Dr. Jesus Nieves Vergara, PNP Crime Laboratory Medico Legal Officer, TSN dated August 26, 1996, pp. 16-18; 25-26; 29.

[38] TSN dated July 29, 1996, p. 159; TSN dated August 12, 1996, p. 53.

[39] People v. Prades, G.R. No. 127569, July 30, 1998; People v. Victor, G.R. No. 127903, July 9, 1998.

[40] 267 SCRA 682 (1997).

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