

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EUSEBIO TRAYA Y QUEMADA, ACCUSED-APPELLANT.*G.R. No. 129052. May 31, 2000*

Ponente: PUNO, J.

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Before us for automatic review is a death sentence meted by the Regional Trial Court of Davao City, Branch 33 to accused-appellant Eusebio Traya y Quemada in Criminal Case No. 38,094-96 for the crime of raping his own daughter. The dispositive portion of the decision reads:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of rape, he is hereby sentenced to suffer the maximum penalty of DEATH, including its accessory penalties, and to indemnify the offended party in the amount of P50,000.00."[1]

The victim is accused-appellant's 16-year old daughter, Eulyn Traya. At the time of the offense, she and her 12-year old sister Liezl were living with the accused, a fruit vendor, in a one-room hut in Sirib, Calinan, Davao City. Their mother, the common-law wife of the accused, died in 1973.

In August 1995, while Eulyn was sleeping beside Liezl and the accused, the latter crawled towards her, removed her dress, panty and bra and forced himself upon her. She resisted but he pinned her hands down. She tried to kick him but to no avail. She could only cry. After the sexual act was consummated, her father warned her not to tell anyone. Liezl saw her father ravishing Eulyn. She, however, did not help Eulyn for she feared her father.

The sexual abuse against Eulyn was repeated several times. The accused would carry out his beastly act twice or thrice a week between 9:00 o'clock and 10:00 o'clock in the evening. Since then, he became suspicious whenever Eulyn would leave the house. He kept on warning her not to tell anyone about his dastardly act.

In September 1996, Eulyn discovered she was pregnant. Her condition was noticed by her half-sister, Marites Guimlan. When Marites asked who the father of the baby was, Eulyn only cried. Marites informed the accused that Eulyn was pregnant but the latter shrugged the matter off. At that time, Marites suspected that the accused was sexually abusing Eulyn, but she had no proof.

On November 30, 1996, the accused had sexual intercourse with Eulyn again. Since her womb had already grown big, she had to lie on her side while the accused was abusing her. At 10:00 o'clock the next morning, Eulyn, assisted by a "hilot", [2] gave birth to a deformed child.[3] The baby died three days later.

After the death of the baby, Liezl told Marites that the father of Eulyn's baby was their father. Marites went to the City Social Services Development Office (CSSDO) in Calinan and reported Eulyn's predicament. On December 5, 1996, CSSDO Officer Gilda Salvana accompanied her to the Calinan Police Precinct. There, they recounted what the accused had done to Eulyn. At 11:45 a.m., P03 Henry Galledo, the Desk Officer, dispatched P03 Achilles Bargio and Martino Adtoon to verify the report. At around 4:00 p.m., they returned with the accused who denied that he raped Eulyn. At around 4:30 p.m., Eulyn arrived at the police station and filed a complaint for rape

against her father.[4]

On December 9, 1996, the following information was filed against the accused by Prosecutor David W. Natividad, to wit:

"The undersigned accuses the above-named accused of the crime of RAPE, under Art. 335 of the Revised Penal Code, as amended by Presidential Decree 7659, upon the instance of complainant Eulyn Traya, whose affidavit is hereto attached and form(s) part of this information, committed as follows:

"That on or about December 1, 1996, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the complainant Eulyn Traya, her (sic) own daughter against her will.

"CONTRARY TO LAW."

On January 6, 1996, assisted by Atty. Lope Calio of the Public Attorney's Office, appellant pleaded not guilty to the charge.[5] On December 6, 1996, a warrant of arrest was issued against him.[6] He was detained at the Ma-i City Jail.

On January 27, 1997, Eulyn submitted to a medical examination conducted by Dr. Danilo Ledesma. The medical findings revealed that her hymen was reduced to tags because of multiple lacerations brought about by childbirth.[7]

During the trial, the appellant offered no alibi. And, contrary to his plea, admitted in open court that he sexually abused his own daughter:

"COURT (To defendant):

Q: What was the sin against your daughter?

A: The truth is that, I took advantage of my daughter, but it did not happen many times.

ATTY. CALIO (Counsel for defendant):

Q: You mean you raped your daughter?

A: It is not that I harmed or forced her.

COURT:

Q: You mean she consented?

A: Yes, your honor just at the time that I was drunk.

Q: What you are saying is that on (sic) you did not have carnal knowledge with your daughter?

A: Yes, your honor.

Q: But previous to December 1, 1996, you have carnal knowledge with your daughter?

A: Yes, your honor.

Q: How many times; many times?

A: I cannot remember, your Honor.

Q: You cannot remember anymore how many times?

A: Yes, I cannot remember, your Honor.

ATTY. CALIO:

Q: Why did you do it when it is your own daughter?

A: The truth is that, when a person already forgets God, that is possible."[8]

After the trial, Judge Wenceslao E. Ibabao held that even without the admission of the accused, the prosecution had established his guilt beyond reasonable doubt. Accused was meted the death penalty.[9]

Appellant now in his lone assignment of error contends that:

"THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE."

In essence, appellant attacks the credibility of Eulyn's testimony. According to him, if he abused her, she would have reported it to the police or their relatives. Yet, for a long period of time, up to the moment that she got pregnant and delivered a baby, she did not expose him. He also asserts that there was no proof that he forced himself upon her because if it were so, Eulyn would have resisted. He likewise faults her for not asking Liezl's help when the latter was just sleeping beside her when the alleged rape took place.

We find no merit in appellant's protestations.

"Of all so-called heinous crimes, none perhaps more deeply provokes feelings of outrage, detestation and disgust than incestuous rape."[10] Especially so in this case, where appellant contends that the victim, his own daughter, consented to his lascivious desires. Such posturing is not only revolting but goes against established norm. No daughter in her right mind would consent to having carnal knowledge with her own father. She would not go out in public and make a false accusation against him if it were not true.[11]

In a long line of cases, we ruled that the failure of the victim to immediately report the rape is not necessarily an indication of a fabricated charge.[12] In *People v. Casil*,[13] we said that the failure of the victim to report the rape committed against her by her stepfather does not cast a doubt on her credibility and does not mean that the charge is fabricated. In *People v. Manuel*,[14] we held that one should not expect a fourteen-year old girl to act like an adult or a mature and experienced woman who would know what to do under such difficult circumstances and who would have the courage and intelligence to disregard a threat on her life and complain immediately that she had been forcibly deflowered. It is not uncommon for young girls to conceal for some time the assault on their virtues because of the rapist's threat on their lives, more so when the rapist is living with her. Complainant's delay in reporting the sexual violations is thus understandable and does not affect her credibility. In the case at bar, Eulyn's attacker is her own father and in whose house she lived. It is undeniable that the moral ascendancy of a father can lead a daughter to suffer in silence and not report the crime. Judging from Eulyn's testimony, she could not have reported her father's depredation considering that he was her sole parent and she was not very close with her father's relatives. In fact, she considers them as hostile to her and loyal to her father:

"COURT: (To witness.)

Q: Now, the following day, did you report to your neighbors or to any of your neighbors?

A: No, sir.

Q: Why?

A: Because I was afraid of him.

Q: Why are you afraid of him?

A: Because he would maul me.

Q: Did he ever maul you?

A: Yes, sir.

Q: How many times?

A: Many times.

Q: Why would he maul you?

A: Whenever I would go somewhere and even only to the house of my brother and sisters and whenever I go home late also.

Q: Did you ever tell your sister Leizl about your experience that night?

A: No, sir.

Q: Do you have any aunties or uncles in the vicinity or in the neighborhood?

A: Only my grandmother.

Q: Did you tell this to your grandmother?

A: No, sir.

Q: Why?

A: I was afraid because my grandmother and my father are very close.

Q: Why did you not also tell to your half brother and half sisters?

A: I was also afraid because they were close to my father."^[15]

We entertain no doubt that Eulyn was telling the truth. Her testimony was simple and straightforward. It was unflawed by any inconsistency or contradiction. A candid and straightforward narration by the victim of how she was abused must be given full faith and credit for they contain earmarks of credibility. The trial court found these badges of credibility to be present in her testimony.^[16]

"Prosecutor Jose A. Garcia, Jr.

Q: Now, where is Eusebio living today?

A: In Ma-a City jail.

Q: Why is it that he is in jail?

A: Because he was jailed.

Q: Do you know why?

A: Because he raped me.

Q: Now as far as you can recall when was the first time that your father did this to you?

A: In August, I forgot the exact date.

Q: What year.

A: 1995.

Q: What made you remember that it was in August 1995?

A: The fiesta in our bario at that time was approaching.

Q: Eve?

A: Yes, sir.

Q: Can you recall where this happened?

A: In our house, sir.

Q: What were you then doing?

A: I was sleeping.

Q: Who was with you?

A: My sister Leizl.

x x x.

Q: While you were sleeping, can you tell us what happened?

A: My father crawled towards me.

Q: When your father crawled, what did he do?

A: He kissed me, he mashed my breast, he undressed me and he removed my panty.

Q: And next, what happened?

A: He removed my bra, and he had sex with me.

Q: Did you resist your father?

A: Yes, sir.

Q: So, what happened?

A: I was overpowered because he was very strong.

Q: And, how did you feel when he had sex with you?

A: I was angry at him (for) what he did to me.

Q: And, what else did he do to you?

A: He told me not to tell anybody."^[17]

Even on cross-examination, she remained consistent in her testimony:

"Atty. Calio (Counsel for the defendant):

x x x.

Q: You said your father first kissed you, is that correct?

A: Yes, sir.

Q: You immediately recognized that the one who kissed you was your father?

A: Yes, I recognized him by his smell.

Q: Can you tell us what was the smell that you can recognize that it was your father?

A: He smelled (of) cigarettes and liquor.

Q: You mean, your father was drunk at that time?

A: Yes, sir.

x x x.

Q: Now, when your father kissed you, of course you were not surprised because you are his daughter?

A: I was surprised.

x x x.

Q: So, because you were already surprised, you must have done something to your father?

A: I resisted.

Q: How?

A: I kicked him.

Q: You did not tell him, 'Father, why are you doing this?'

A: I told him but he did not say anything.

Q: Instead, he mashed your breasts?

A: Yes, sir.

Q: You did not move wildly considering that it was already wrong why (sic) your father was doing?

A: I moved wildly.

Q: And, you even stood up.

A: I could not stand because he held me.

Q: You did not shout to your sister, 'Liezl, Liezl, please help me'?

A: No, Sir.

Q: Leizl at that time was still sleeping at your side?

A: Yes, sir.

Q: You did not even kick Leizl, 'Leizl, please wake up'?

A: No, sir.

Q: Why?

A: I could not say anything because I cried already and I kept on resisting.

Q: You did not scratch the face of your father?

A: No, because he held my two hands.

Q: You did not kick the penis of your father?

A: I kicked his feet but I did not hit his penis.

Q: So, there was a wrangling inside the room?

A: Yes, sir.

Q: Yet, Leizl was not able to wake up?

A: She was awakened but she did not mind.

Q: You saw Leizl wake up?

A: Yes, because she moved.

Q: And because she moved you were thinking that she was awakened?

A: Yes, sir.

Q: And yet, you did not summon Leizl to please wake up and report to your grandmother what your father was doing to you?

A: No, sir.

Q: So, on that evening, even if Leizl was already awakened, your father was able to undress you, remove your panty, remove your bra and had sex with you on (sic) that particular room?

A: Yes, sir."[18]

Eulyn's accusation against her father is buttressed by the eyewitness account of Leizl:

"Pros. Garcia:

Q: Now, why do you say that your father had sex with your sister?

A: Because I saw them.

Q: You saw your father on top of your sister?

A: Yes, sir.

Q: Usually, what time could this be?

A: In the middle of the night.

COURT (to witness).

Q: Why do you say that he had sex with your sister?

A: Because I personally saw them.

Q: What did you see?

A: That he was on top of my sister.

PROS. GARCIA:

Q: Now, did you see your sister resist?

A: Yes, sir.

Q: What about you, did you resist?

A: I just kept silent because I was afraid.

COURT (to witness)

Q: How many times did you see your father having sex?

A: Many times.

PROS. GARCIA:

Q: Many times in the year 1995?

A: Yes, sir.

Q: In 1996, did you see them again?

A: Yes, sir.

Q: You and your sister and father would sleep in one bed, or in one sala, or can you please describe the place where you usually sleep?

A: I sleep beside my father, then next to me is my sister.

x x x.

Q: Now, since this would happen in the middle of the night, how come you could see your father on top of your sister?

A: I was awakened because of the movement.

Q: Can you perceive what were these movements which awakened you?

A: Yes, sir.

Q: What are these movements?

A: At that time, he would place himself on top of her.

Q: Now, is the room lighted whenever your father (is) on top of your sister?

A: Not, sir.

Q: How would you know that it was your father who was on top of your sister?

A: Because whenever I was awakened, I groped my father beside me and I could find him there.

Q: Liezl, did it not occur to your mind that you should report to your Lola or aunts regarding what you saw?

A: I would think of it but I am afraid.

Q: Why are you afraid of your father

A: I am afraid of my father, sir.

Q: Why?

A: He might kill all of us if I will tell anybody.

Q: Were you ever punished by your father before?

A: Yes, sir.

Q: What about Eulyn?

A: She was slapped.

Q: How many times (was) Eulyn slapped by your father?

A: Everytime Eulyn leaves the house without the permission from my father."[19]

On cross-examination, she maintained what she saw:

"Q: Now, you told us that you saw your father on top of your sister Eulyn, is that correct?

A: Yes, sir.

Q: You were not sure that it was your father because it was dark?

A: I am sure, sir.

Q: Did you see him actually?

A: Yes, sir.

x x x.

Q: Now, when you were awakened , was it unusual on your part to see your father on top of Eulyn?

A: I found it unusual, sir.

Q: When your father was on top of Eulyn, they were just in (sic) your side?

A: Yes, sir.

Q: You can even touch them.

A: Yes, sir."[20]

We again note that Eulyn's father was her sole parent and breadwinner. She would not, therefore, risk losing the one person who could support her and her younger sister by purveying a false accusation against him. Her resort to the force of law was necessary to put an end to her father's sexual abuse.

Under Article 335 of the Revised Penal Code,[21] one way to commit rape is by having carnal knowledge of a woman using force or intimidation.[22] In a rape committed by a father against his own daughter, the father's moral ascendancy and influence over the latter substitutes for violence and intimidation.[23] Thus, the lower court is correct in convicting accused-appellant of rape since he used his moral ascendancy over his daughter in repeatedly abusing her. Moreover, the evidence shows that Eulyn resisted the efforts of the appellant but her resistance proved futile.

We now go to the penalty.

The trial court meted accused-appellant the extreme penalty of death under Republic Act 7659 which provides that the death penalty shall be imposed if the crime of rape is committed by a parent against his child who was under eighteen years (18) of age at the time of the assault.[24]

A reading of the Information against accused-appellant, however, reveals that he was merely charged with simple

rape punishable by reclusion perpetua. It stated:

"The undersigned accuses the above-named accused of the crime of RAPE, under Art. 335 of the Revised Penal Code, as amended by Presidential Decree 7659, upon the instance of complainant Eulyn Traya, whose affidavit is hereto attached and form(s) part of this information, committed as follows:

That on or about December 1, 1996, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the complaint Eulyn Traya, her (sic) own daughter against her will.

CONTRARY TO LAW."

The fact of the minority of the victim was not stated in the Information. Only the relationship of the victim as the daughter of the offender was alleged therein. The rule is that the elements of minority of the victim and her relationship to the offender must concur. The failure to allege one of these elements precludes the imposition of the death penalty. We held in the case of *People vs. Abella*:^[25]

"The Court emphasizes anew that in decreeing the death penalty, under the aforequoted law, the information or complaint must specifically allege the qualifying circumstances that would justify the imposition of that extreme penalty. In this case, the circumstances that would qualify the offense are (a) that the accused-appellant is the father of the victim; and (b) that the latter is under 18 years of age at the time of the rape. While the criminal complaint in this case did state that the victim is the daughter of the accused-appellant, it, however, has failed to mention her being under 18 years of age at the time of the commission of the offense. The omission is a fatal flaw in the imposition of the death penalty."

The case of *People vs. Calayca*^[26] also finds application in this case. We ruled in that case:

"There being no allegation of the minority of the victim in the Information, he cannot be convicted of qualified rape as he was not properly informed that he is being accused of qualified rape. Appellant's conviction of qualified rape violates his constitutional right to be properly informed of the nature and cause of accusation against him. In a criminal prosecution, it is fundamental rule that every element of the crime charged must be alleged in the Information. The main purpose of this constitutional requirement is to enable the accused to properly prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense."

Hence, we find that the proper penalty to be imposed on accused-appellant should be reclusion perpetua.

Nonetheless, we note that the crime committed by the appellant was incestuous rape. The offender was the victim's own father^[27] who exercised sole parental authority over her. In *People v. Lao*,^[28] we condemned this kind of criminal in lacerating language, viz:

"Such a 'father' deserves no place in society, and more especially in a country like the Philippines whose fundamental law considers the family as a basic autonomous social institution and the foundation of the nation, recognizes the sanctity of family life and mandates the State to defend the right of children to special protection from all the forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development."

Consequently, we hold that an award of P20,000.00 as exemplary damages and P50,000.00 as moral damages are in order.

IN VIEW WHEREOF, the judgment of the trial court is **AFFIRMED** with **MODIFICATION** reducing the sentence to reclusion perpetua. Accused-appellant is further ordered to pay the offended party the amount of P50,000.00 as moral damages and P20,000.00 as exemplary damages.

SO ORDERED.

Bellosillo, Melo, Vitug, Kapunan, Mendoza, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

Davide, Jr., C.J., on official leave.

Panganiban, Quisumbing, Ynares-Santiago, and De Leon, Jr., JJ., on leave.

[1] Rollo, p. 29.

[2] A local midwife.

[3] Exhs. "D" and "E".

[4] TSN, January 24, 1997, pp. 18-20.

[5] Original Record, p. 18.

[6] Ibid, p. 8.

[7] TSN, January 27, 1997, p. 5.

[8] TSN, February 4, 1997, pp. 3-4.

[9] Citing *P v. Lucas*, 181 SCRA 316 (1990).

[10] *P v. Baculi*, 246 SCRA 756 (1995).

[11] *P v. Lao*, 249 SCRA 137 (1995).

[12] *P v. Espinoza*, 247 SCRA 66 (1995); *P v. Vitor*, 245 SCRA 392 (1995); *P v. Plaza*, 242 SCRA 724 (1995); *P v. Abendano*, 242 SCRA 531 (1995); *P v. Casil*, 241 SCRA 285 (1995).

[13] 241 SCRA 285 (1995).

[14] 236 SCRA 545 (1994), cited in *P v. Vitor*, 245 SCRA 392 (1995).

[15] TSN, January 24, 1997, pp. 34-37.

[16] *P v. Umali*, 242 SCRA 17 (1995).

[17] TSN, January 24, 1997, pp. 32-34.

[18] Ibid., pp. 55-57.

[19] January 27, 1997, pp. 3-15.

[20] Ibid., pp. 17-21.

[21] As amended by Republic Act 7659, Sec. 11 provides, inter alia:

Rape is committed under any of the following circumstances:

1. by using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious;
3. When the woman is under twelve years of age or is demented.

[22] In the case at bar, the rape was committed before the enactment of republic Act No. 8353 entitled "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES." Consequently, this law will not apply.

[23] *P v. Casil*, 241 SCRA 285 (1995).

[24] 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.

[25] G.R. No. 131847, September 22, 1999.

[26] 301 SCRA 192 (1992).

[27] See Exhibit "F" of the prosecution.

[28] *P v. Lao*, 249 SCRA 137, 139 (1995), citing Section 12, Article II; Section 1 and 3, Article 15, Constitution.

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