

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELEUTERIO DIMAPILIS ALIAS JUN ALIAS DAKILA ALIAS DAKY, ACCUSED-APPELLANT.**

*G.R. No. 129573. October 18, 2000*

Ponente: BELLOSILLO, J.

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**BELLOSILLO, J.:**

On 21 April 1997 the Regional Trial Court of Manila found the accused ELEUTERIO DIMAPILIS guilty of rape and imposed upon him the supreme penalty of death.[1]The case is now before us on automatic review.

In an Information filed by State Prosecutor Lilian Doris S. Alejo, ten (10)-year old Sharon Degala Salas, assisted by her maternal grandaunt Violeta Benjamin, charged Eleuterio Dimapilis, common-law husband of Sharon's mother, with having raped her sometime in June 1993. Being the common-law husband of her mother, Sharon referred to Eleuterio as her stepfather.

The records show that aside from the Information in the instant case, three (3) other Informations were filed by the same complaining witness against Eleuterio Dimapilis all charging him with rape committed in Makati and now pending before this Court in G.R. Nos. 128619, 128620 and 128621. Still another Information was filed by Sharon against the same accused for rape allegedly committed at FTI, Bicutan, Taguig, although the records are bereft of any information on the developments of that case.

Sharon's calvary began sometime in June 1993 when her mother Linda Degala commenced a common-law relationship with Eleuterio Dimapilis, also known as Jun, Dakila or Daky. Linda lived with Eleuterio in a cramped one (1)-room structure located in a thickly populated area in Sta. Ana, Manila, together with her four (4) children by a previous marriage one of whom was Sharon.

Eleuterio was a jeepney driver plying the PRC - LRT route. He would leave the house at around four o'clock in the morning and return home at seven o'clock in the evening. Linda was unemployed. At times she would joy-ride with Eleuterio; at other times, she would gamble in Batute, Makati. Her children stayed home as they were still very young, except for nine (9)-year old Sharon[2] who was in grade three (3) in school.

One afternoon, at around two o'clock, Linda told Sharon not to go to school but to stay home and attend to her three (3) siblings as she was going to gamble in Batute, Makati. On that occasion Eleuterio also stayed home with Linda's children because the jeepney he was driving had to be repaired. According to Sharon, while she was sound asleep that afternoon Eleuterio suddenly woke her up. Her siblings at that time were outside the house playing while she and Eleuterio were alone in the house. Sharon claimed that on such occasion Eleuterio sexually abused her - ginalaw/hinalay, in her own words. When asked to explain how she was ginalaw/hinalay, she said that Eleuterio "fingered" her private organ, touched her breasts and kissed her body while rubbing his penis presumably to attain an erection. She later felt his penis pressed against her vagina and he was trying to insert it into hers. However, he did not succeed in penetrating her as she cried out in pain.

This incident was repeated three (3) times in three (3) different venues. From Sta. Ana, Manila, where her first sexual abuse took place, her family moved to FTI, Bicutan, Taguig. There, Eleuterio "fingered" her again while poking a kitchen knife at her.

Sometime in 1994 her family transferred to Batute, Makati where Eleuterio again poked a kitchen knife at Sharon and tried to force his penis once more into her organ. Her ordeal culminated in February 1996 when her family moved to PNR, San Antonio Village, Makati, where Eleuterio again forced his organ into hers.

All the while Sharon kept mum about her sexual encounters with Eleuterio. But she could not keep it for long. In May 1996 she broke her silence. She finally told Violeta Benjamin, a maternal grandaunt whom she called Lola Violy, about the sexual assaults of Eleuterio. Immediately, her Lola Violy brought her to the National Bureau of Investigation where she was investigated, her statement taken,[3] and medico-legal examination conducted.

In the medical report of Dr. Aurea P. Villena, her examining physician, Sharon's hymen was "moderately tall, moderately thick with superficial old healed laceration at three (3) o'clock position corresponding to the face of a watch, edges rounded, non-coaptable." Dr. Villena clarified that the term "superficial old healed laceration" meant that the laceration did not extend up to the entire width of the hymen and could have been sustained not more than three (3) months before her examination.[4] Upon inquiry, she opined that a laceration of this kind was possible even if the penis only had slight contact ("dinikit") with the vagina and that the accused might have tried to get it in but had to remain out as the vaginal opening was small.[5] There was no full penetration but the intent to enter the vagina was evident.[6]

Accused Eleuterio Dimapilis denied the charge and surmised that Sharon was merely brainwashed by her grandaunt Violeta Benjamin who was against his maintaining a relationship with her niece, Sharon's mother. According to him, Violeta's anger towards him worsened when he destroyed the windows and gate of her house. He narrated that when he arrived home at about two o'clock early morning, he found his common-law wife Linda crying. When he asked her, Linda told him that she was shoved and mauled by her Auntie Violy, referring to Violeta Benjamin, when she went to the latter's house to fetch Sharon. According to Eleuterio, he got mad because at that time Linda was already pregnant with his child. He went to her Auntie Violy's house in Sorsuage, Makati, to demand an explanation why she maltreated his wife but nobody answered him at the door although he saw people inside peeping through the window jalousies. Irrked, he hurled stones at the house, breaking in the process a few jalousies and a portion of the gate. Three (3) days later, a co-worker of Eleuterio informed him that someone was looking for him. He turned out to be an NBI agent who was there to pick him up for questioning in connection with a complaint filed against him. At the NBI headquarters he learned, to his surprise, that a complaint for rape was filed by Sharon with the assistance of Violeta Benjamin.

The accused argued that the rape charge supposedly committed in Sta. Ana in June 1993 was easily belied by the fact that at that time they were no longer residing in Sta. Ana, but in Batute, Makati, in a small rented room where they stayed up to 1994. He explained that they only resided in Sta. Ana, prior to 1993.

As if affirming her faithfulness and loyalty to her common-law husband, Linda did not believe her own daughter's account; instead, she testified in favor of Eleuterio. She narrated that she and Eleuterio had been living together as husband and wife since 1992, renting a small room at the squatter's area together with her four (4) children, including Sharon, and that he worked as a jeepney driver. She recounted that Sharon often went to Lapaz, Makati, to work as a manicurist at her Aunt Alma's place. One time she fetched Sharon from there but Alma and her Auntie Violy refused to let Sharon go. According further to Linda, despite her pregnancy her Auntie Violy mauled her and whisked Sharon away in a taxicab to avoid her. She reported the incident to Eleuterio who upon hearing her rushed to their Auntie Violy's house to confront her but failed to talk to her. Three (3) days later, an

NBI agent went to their house looking for Eleuterio. She directed the agent to the office where Eleuterio was working as an stuntman. She found out later that Eleuterio was apprehended and was being detained at the NBI headquarters. There, she was surprised to see her Auntie Violy and that Sharon had filed a complaint against Eleuterio for rape. It dawned on her then that that might be what her Auntie Violy meant when she overheard her say that she would not stop until Eleuterio was incarcerated.

On 21 April 1997 the trial court rejected the theory of the defense and declared the accused Eleuterio Dimapilis guilty of rape. The court a quo declared that the accused's defense was a mere blanket denial which could not stand against the clear narration of Sharon that Eleuterio pressed his organ against hers after he woke her up, "fingered" her private organ, touched her breasts and kissed her body while rubbing his penis obviously to excite himself.

As regards the issue of residence raised by the defense, the trial court observed that the accused failed to specifically state the month in 1993 when they moved out of Sta. Ana, so that it could only be presumed that they were still residing in Sta. Ana when the rape was committed. Consequently, the trial court convicted the accused Eleuterio of rape and sentenced him to death. The trial court explained that under Art. 335 of The Revised Penal Code, as amended by RA 7659, the imposition of the penalty of death was justified as the qualifying circumstances of minority and relationship were established, Sharon being below twelve (12) years old at the time of the rape and the accused Eleuterio was the common-law husband of Sharon's mother.

The defense now asserts that the prosecution failed to prove the guilt of the accused beyond reasonable doubt. Accused Eleuterio argues that an examination of the testimony of Sharon would reveal that she failed to sufficiently outline the circumstances behind the perpetration of the offense, having utilized ambiguous terms or sweeping generalizations, describing the acts he allegedly performed on her, e.g., ginawalaw or hinalay. He contends that the absence of a specific date as to when the rape was committed, the events leading to the commission of the crime, as well as the manner by which the abuse was committed, cast doubt on the veracity of Sharon's imputations and militates against her credibility. Thus, he concludes, for failure of the prosecution to draw details of the rape from Sharon he should be acquitted.

The evaluation of the testimonies of witnesses by the trial court is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain circumstances of substance or value which, if considered, might affect the result of the case. In prosecutions for rape, this Court has generally been guided by the following considerations in the evaluation of evidence: (a) 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; (b) in view of the nature of the crime in which only two (2) persons usually are involved, the testimony of the complainant must be scrutinized with extreme caution; and, (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Consequently, conviction must rest on nothing less than proof beyond reasonable doubt.

A scrutiny of the records reveals that Sharon gave a seemingly confusing testimony although, quite apparently, the slip errors could be traced to the bungling presentation of the prosecution's evidence. Nonetheless, this Court is convinced that Sharon was able to narrate in plain language the manner she was sexually abused by the accused. In her direct examination Sharon said that she had to leave their place in Sta. Ana because she was ginagalaw or hinahalay by Eleuterio. She recounted, in clarification, that in June 1993 in Sta. Ana, Eleuterio "fingered" her, kissed her body, and forced his organ against hers.[7] When she was cross-examined she clarified that the incident happened at two o'clock in the afternoon and that the accused "fingered" her while rubbing his penis to attain an erection.[8] She was sleeping at the time and there were no other persons inside the room.[9] She did not go to school so that she could watch over her siblings because her mother was going to gamble in

Batute.[10] On redirect examination she stuck to her theory that the incident happened in June 1993 when the accused did not report for work because his jeepney had to be repaired.[11] It was on the same occasion that Eleuterio tried to insert his organ into hers and she felt it when he pressed it against her private part.[12] At that time, her mother was not around as she was in Batute while her brothers and sisters were playing outside the house.[13] Thus, contrary to the contention of the accused, Sharon made a consistent and detailed account of how he sexually abused her in June 1993 inside their residence in Sta. Ana when nobody was around.

The exact date in June 1993 need not be specified, especially when Sharon could no longer remember it. She nevertheless particularly recalled that it was the day she did not go to school upon instruction of her mother and Eleuterio remained at home because his jeepney had to be fixed. Witnesses are not always expected to have a precise memory of the time and date when an event transpired. It is sufficient that it can be determined with particularity as opposed to other occasions unless time is considered an element of the crime. A perfect recollection of the time when a particular event occurred may even be viewed with suspicion and considered an indicium of the falsity or fabrication of a witness' account.

The terms *ginalaw* and *hinalay* are admittedly cryptic. Although they were sufficiently clarified by Sharon to mean that the accused "fingered" her private organ, kissed her body while stimulating his penis into an erection and tried to penetrate her, albeit unsuccessfully in view of the natural resistance at her opening and her propitious cry of pain, all prelude to copulation, the fact of penetration, however slight, which is necessary for a conviction for consummated rape, remained nebulous and unclear.

Notably, Sharon made conflicting assertions regarding the entry of the penis into her vagina. On direct examination, Sharon confirmed that Eleuterio inserted his organ into hers, which pained her and for which she cried.[14] On cross-examination, however, twice she denied that penetration occurred.[15] On re-direct examination she reiterated that he was not able to insert his private part into hers because she felt pain.[16] In fact, subsequently, she reiterated that the organ of the accused did not penetrate hers.[17] Thus, although in her direct examination she asserted that his penis penetrated her vagina, she repeatedly and steadfastly denied any penetration of her organ in subsequent proceedings.

Thus, in *People v. Campuhan*,<sup>[18]</sup> this Court clarified that the touching of the female organ to constitute consummated rape should be construed in relation to the entry by the penis into the labia majora. It is not mere touching in the ordinary sense, nor a grazing or clashing alone of the organs, but there must be entry of the vagina of the victim even in the slightest degree. In that case, the judgment of the court *a quo* holding the accused guilty of consummated rape was modified to attempted rape for failure of the prosecution to prove the slightest intrusion into the labia majora of the victim.

The testimony of the medico-legal officer is definitive proof that penetration did not occur. Dr. Aurea P. Villena testified that she found superficial old healed lacerations in the vagina of Sharon that showed that she had indeed been abused, and that the lacerations could only have been sustained not more than three (3) months before the examination was conducted,<sup>[19]</sup> which was in 1996 or three (3) years after the June 1993 incident. As such, it could not be held as conclusive evidence thereof. At any rate, it may be recalled that three (3) other Informations for rape were filed by Sharon against the same accused for sexual abuses committed in Makati the last of which occurred in February 1996, or three (3) months before the medico-legal examination in May 1996. Thus it stands to reason that by proximity alone the medico-legal report would be more reflective of that occasion rather than the event subject matter of this review. Be that as it may, it is clear that the accused sexually abused Sharon in June 1993. From all manifestations, Eleuterio attempted to rape Sharon. By his overt acts, he had commenced the commission of rape but was not able to consummate the act because of Sharon's outcry, which was not clearly shown to have emanated from any penetration but merely from an attempt to do so.

Parenthetically, the trial court erroneously relying on Art. 335 of The Revised Penal Code as amended by RA 7659 imposed the penalty of death on the accused on account of the minority of the victim and her relationship to the accused. However, it should be noted that the crime was committed in June 1993 at a time when RA 7659 imposing the death penalty was not yet in effect.[20] Consequently, the accused should be penalized in accordance with the old law, Art. 355 before its amendment, under which an accused who had sexual congress with a child below twelve (12) years old was held guilty of statutory rape and sentenced to the penalty of reclusion perpetua. The circumstance of minority was taken merely as an element of the crime of statutory rape, and relationship was treated as an aggravating circumstance which could not increase the indivisible penalty of reclusion perpetua as imposed by law.

The penalty for attempted rape is two (2) degrees lower than the imposable penalty for consummated rape which is reclusion perpetua. Two (2) degrees lower would be prision mayor the range of which is six (6) years one (1) day to twelve (12) years. Applying the Indeterminate Sentence Law, and taking into account the presence of relationship as aggravating circumstance, the maximum of the penalty to be imposed upon the accused shall be taken from the maximum period of prision mayor, the range of which is ten (10) years and one (1) day to twelve (12) years. The minimum shall be taken from the penalty next lower in degree which is prision correccional the range of which is six (6) months and one (1) day to six (6) years, in any of its periods.

As regards moral damages, they are awarded in such amount as the court deems just without necessity for pleading or proof thereof. Recent jurisprudence[21] has pegged the amount to P50,000.00 for victims of consummated rape. The award by the court a quo of P500,000.00 as moral damages in favor of the victim is thus too excessive. For attempted rape P25,000.00 may be considered reasonable.

Exemplary damages may likewise be awarded to the victim in the amount of P10,000.00, considering the existence of the aggravating circumstance of relationship, as a deterrent against those who may be similarly situated.[22]

WHEREFORE, the Decision of the court a quo declaring ELEUTERIO DIMAPILIS (also known as Jun, Dakila or Daky) guilty of rape and sentencing him to death and to pay his victim P500,000.00 in moral damages is MODIFIED; instead, the accused is held guilty of ATTEMPTED RAPE and is sentenced to an indeterminate prison term of four (4) years and two (2) months of prision correccional medium, as minimum, to ten (10) years four (4) months and ten (10) days of prision mayor maximum, as maximum, and to pay his victim Sharon Degala Salas the sum of P25,000.00 for moral damages and P10,000.00 for exemplary damages. Costs de oficio.

### **SO ORDERED.**

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

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[1] Decision penned by Judge Manuel T. Muro, RTC-Br. 54, Manila, in Crim. Case No. 96-153220.

[2] Her birth certificate states that she was born on 13 February 1983, which means, she was ten (10) years old at the time the rape was committed in June 1993.

[3] "Sinumpaang Salaysay ni Sharon Salas y Degala na ibinigay kay Imbestigador Gil H. Maciano, ngayong ika-23 ng Mayo 1996, dito sa tanggapan ng NBI, National Capital Region, NCR, Taft Ave., Manila."

[4] TSN, 16 January 1997, pp. 16-17.

[5] Id., p. 22

[6] Ibid.

[7] TSN, 6 January 1997, p. 11.

[8] TSN, 15 January 1997, p. 13.

[9] Id., p. 16.

[10] Id., p. 17.

[11] Id., p. 18.

[12] Id., pp. 18-19.

[13] Id., pp. 19-20.

[14] See Note 7, p. 26.

[15] See Note 8, p. 14.

[16] Id., p. 17.

[17] Id., p. 21.

[18] G.R. No. 129433, 30 March 2000.

[19] See Note 4.

[20] The date of effectivity of RA 7659 "An Act Imposing the Death Penalty" is 31 December 1993.

[21] People v. Ayo, G.R. No. 123540, 30 March 1999; People v. Mengote, G.R. No. 130491, 25 March 1999; People v. Victor, G.R. No. 127903, 9 July 1998.

[22] Art. 2230. New Civil Code; People v. Solema, G.R. No. 129397, 8 February 1999.

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