PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. GILBERT MOTOS, ACCUSED-APPELLANT.

G.R. No. 130187. October 20, 1999

Ponente: VITUG, J.

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VITUG, J.:

Gilbert Motos, herein accused-appellant, was charged before the court a quo in a sworn complaint, hereinbelow reproduced, with the crime of rape.

> "SWORN COMPLAINT
>
> "The undersigned State Prosecutor accuses GILBERT MOTUS of the crime of STATUTORY RAPE, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act Nos. 7610 and 7659 committed as follows:

"`That on March 3, 1994 in the Municipality of Taguig, Metro Manila and within the jurisdiction of this Honorable Court, said accused GILBERT MOTUS, actuated by lust, and by means of force and intimidation did then and there, willfully, unlawfully and feloniously had carnal knowledge of me, against my will and consent to my damage and prejudice.'

> "CONTRARY TO LAW.
>
> "Manila, July 15, 1994
>
> (SGD)JENALYN OLIS
>
> Complainant
>
> "Assisted by:
>
> (SGD)EDNA OLIS
>
> (Mother)
>
> "SUBSCRIBED AND SWORN to before me this 15 day of July, 1994
>
> (SGD)EMMANUEL D. MEDINA
>
> State Prosecutor"[1]

When arraigned, the accused entered a plea of not guilty.

The Solicitor General gave a detailed narrative of the evidence presented at the court below by the prosecution; viz:

> "Sometime in the later afternoon of March 3, 1994, seven-year old Jenalyn Olis and her sister Jennifer, who was nicknamed `Jin Jin' and about a year and a month old, were playing inside the jeepney of appellant

Gilbert Motos. Said jeepney was parked in front of the house where both appellant and Jenalyn lived. Appellant was the husband of the niece of Jenalyn's father. They all lived in a two-storey house at Taguig, Metro Manila. The first floor of the house was occupied by the parents-in-law of appellant, while the second floor was divided into three rooms; one of the rooms was occupied by boarders, the second by Jenalyn's family, and the third by appellant and his family (pp. 4-5, tsn, J. Olis, June 6, 1995; pp. 5-7 and 9, tsn, E. Olis, October 19, 1995; pp. 31 and 34-35, Decision).

"After playing inside the jeepney, Jenalyn decided to go home. She took Jin Jin with her. Before they could reach their room, appellant, who was inside his room, called out to Jin Jin. Jin Jin went inside his room. Jenalyn went after Jin Jin to bring her back. But, as soon as Jenalyn was inside appellant's room, appellant closed and locked the door (pp. 4-7, tsn, J. Olis, June 6, 1995; pp. 4-6, tsn, J. Olis, July 26, 1995).

"Inside appellant's room on top of a wooden bed, Jin-Jin played with the doll of Donna, appellant's daughter. Apparently, Donna was not in the room with them. Jenalyn, on the other hand, became drowsy as it was nearly nighttime, and eventually fell asleep on the wooden bed beside her sister who continued playing with the doll (p. 7, tsn, J. Olis, June 6, 1995; pp. 6-12, tsn, J. Olis, July 26, 1995).

"Jenalyn was roused from sleep when she felt appellant's heavy body on top of her. Appellant was naked from the waist down. Jenalyn, who found that she was no longer wearing her shorts, felt appellant's penis inside her vagina and excruciating pain as blood streamed out of her genitalia. She cried and cried. After having sexual intercourse with the seven-year old Jenalyn, appellant plugged in a computer which he had in his room and told her to play with it. All this time, Jin-Jin was beside them on the wooden bed, playing with the doll (pp. 8-13, tsn, J. Olis, June 6, 1995; pp. 12-13 and 16-18, tsn, J. Olis, July 26, 1995).

"Appellant told Jenalyn to take a bath, Jenalyn retorted that she was going to tell her mother and father about what happened. He thus made her take a blue-and-white colored capsule which she swallowed with water. Jenalyn thought that the medicine he gave her was for the purpose of stopping the flow of blood from her genitalia. Appellant then let the sisters out of his room. (pp. 13-15, tsn, J. Olis, June 6, 1995; pp. 12-26, tsn, J. Olis, October 4, 1995).

"Upon reaching her family's room, Jenalyn took a bath. Afterwards, she dressed herself and went to bed. It was already nighttime. Jenalyn woke up when her elder brother Julius arrived. She told him to fetch their mother because her vagina was bleeding (pp. 14-15, tsn, J. Olis, June 6, 1995).

"Julius immediately went to fetch their mother Edna Olis, a vendor of peanuts, at a stall in General Santos Avenue in Taguig, Metro Manila. Around seven o'clock that evening, Edna was at the stall with her husband Victoriano who was also a vendor. Julius told her that Jenalyn had blood all over her shorts and t-shirt. Edna asked Julius why but the boy replied that Jenalyn refused to speak. Edna went home immediately (pp. 4 and 7-10, tsn, E. Olis, October 19, 1995).

"Edna found Jenalyn lying on the cement floor of their room. Edna asked Jenalyn why she had blood on her clothes. Jenalyn did not answer her mother. Edna then carried Jenalyn to their wooden bed and took off her daughter's short pants. Edna found an old pair of panties folded like a napkin and pressed against Jenalyn's vagina. As Edna removed the folded panty, blood gushed out of Jenalyn's genitalia (pp. 10-12, tsn, E. Olis, October 19, 1995).

"Edna started questioning Jenalyn. Edna asked Jenalyn if she came from school or she sat on a sharp object. She also asked Jenalyn who inflicted injury on her. However, to all these questions, Jenalyn, whose entire body was trembling, merely shook her head and stared at the ceiling. Edna wrapped Jenalyn in a blanket and continued questioning her. Jenalyn finally pointed her right hand towards the general direction where appellant lived. Edna thus asked her if she came from the house of appellant and Jenalyn nodded. Edna persisted in persuading her daughter to reveal the identity of the person who had hurt her. But, Jenalyn refused or could not speak (pp. 12-13, tsn, E. Olis, October 19, 1995).

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> "Edna left Jenalyn on the wooden bed. She went back to their market stall to fetch her husband. When they got home, Edna saw blood still gushing out of Jenalyn's vagina. Victoriano and Edna thus wrapped their daughter in a blanket, called for a taxi and brought her to the Philippine General Hospital (PGH). (pp. 13-14, tsn, E. Olis, October 19, 1995).
>
> "Upon their arrival at the hospital, Jenalyn was brought to the emergency room. The doctor who first attended to her, namely, Dr. Ma. Theresa Reyes, found Jenalyn unconscious and saw that her vagina was bleeding. Dr. Samson ordered a `stat CBC' and a chest X-ray. She referred Jenalyn to an obstetrician-gynecologist who then performed an internal examination under a general anesthesia (pp. 6-12, tsn, Reyes, May 7, 1996).
>
> "Dr. Rosemarie Samson, the obstetrician-gynecologist who examined Jenalyn, found that the victim had `uncontrolled bleeding secondary to sexual abuse, secondary to a forceful entry of something to a whole' (p. 16, tsn, Samson, February 20, 1996). Dr. Samson likewise found that Jenalyn suffered from vaginal lacerations which needed surgical repair (pp. 6-7, tsn, Samson, February 20, 1996). Jenalyn bore (1) a 1 centimeter-deep laceration at the vaginal wall; (2) a laceration of 1 centimeter at the perennial body which is the portion between the anus and the vagina; and (3) a laceration of 3 centimeters in the vagina at the eight o'clock position. Said lacerations were found to be actively bleeding (p. 12, Samson, February 20, 1996).
>
> "Jenalyn was likewise referred for toxicology clearance to the National Poison Control and Information Service of the UP-PGH because she was unconscious when she was brought to the hospital. Urine and blood samples were taken from her (pp. 3, 6-10 and 15-16, tsn, Panganiban, March 25, 1996). Dr. Lynn Panganiban, the doctor who examined the laboratory results of Jenalyn's urine and blood tests, found that `Serum and urine barbiturate levels done at the laboratory of the Department of Pharmacology, showed the serum barbiturate level of 4.337 and a urine barbiturate level of 14.48 mg. over 100. Presence of barbiturates in the biologic fluids of this patient who does not have any indication for the administration of the drug or whose parents deny administration of the drug may indicate that it may have been given to her without her knowledge' (pp. 11-12, tsn, Panganiban, March 25, 1996).
>
> "According to Dr. Panganiban, a person of Jenalyn's age who is administered phenobarbital `... usually will be unconscious, could be asleep and hardly to wake up' (p. 12, tsn, Panganiban, March 25, 1996) and would be unconscious for `...twenty-four (24) hours or it could be lasting for weeks based on the half-life' (p. 13, tsn, Panganiban, March 25, 1996).
>
> "On 04 March 1994, Victorino Olis went to the National Bureau of Investigation and reported the rape of his daughter. He came back with an NBI agent, Cyrus Alusan, who took down the statement of Jenalyn. Two days later, Victoriano likewise reported the rape of his daughter to the Taguig Police. The police took down his statement as regards Jenalyn's rape by appellant (pp. 15-16, tsn, E. Olis, October 19, 1995; p. 9 Decision)."[2]

The Office of the Public Attorney, upon the other hand, pictured a brief but totally divergent account of what had happened. The defense counsel asseverated, in line with the accused's declaration before the court, thus:

> "Gilbert Motus testified that on March 3, 1994 at 1:30 P.M., while on the way home, he [met] the victim Jenalyn Olis coming from a[n] alley walking abnormally. He assisted her and brought her upstairs at the second floor of their house. He laid down the victim in the wooden bed of the victim's room. After that, he went down to look for Jenalyn's mother because he saw blood and fluid from the victim and had a hard time in walking. While waiting for the victim's parents he fall asleep and woke up at about 5:30 PM."[3]

On the following day of 04 March 1994, the accused claimed, he saw Jenalyn's mother and later her father who both informed him that Jenalyn had been hospitalized. The accused offered to extend financial help to Jenalyn. On 15 December 1994, on his way home from work, the accused was met by several persons, introducing themselves as barangay tanods. He was invited to go with them to the house of the Barangay Captain from where, in turn, he was escorted by two policemen to the municipal hall in Pulilan. At the police headquarters, Edna Olis pointed to

him as being Jenalyn's rapist. He was detained in Pulilan until he was transferred, two days later, to the Taguig municipal jail.

After assessing the evidence before it, the Regional Trial Court, Branch 264, NCJR, of Pasig City found accused Gilbert Motos guilty beyond reasonable doubt of the crime of rape defined and penalized under paragraph 3, Article 335, of the Revised Penal Code. The trial court sentenced Motos "to suffer the penalty of death."

The pronouncement of death sentence by the court a quo has brought the case up for automatic review by this Court. Accused-appellant has interposed the following assignment of errors:

> "1. The trial court gravely erred in considering the letter of the accused as an offer of compromise and operates as an admission of the crime charged.
>
> "2. The trial court gravely erred in imposing the death penalty despite the absence of qualifying circumstance."[4]

The Court finds merit in the appeal but only insofar as the imposition by the trial court of the death penalty is concerned. As so hereinafter explained, the judgment of conviction should be upheld but the sentence pronounced on accused-appellant will have to be reduced to reclusion perpertua.

Appellant Gilbert Motos has been positively identified by his rape victim, Jenalyn Olis, as being the perpetrator of the bestial act. The explicit narration made by Jenalyn of the events that transpired before, during and after the rape incident appears to be completely forthright. Almost nothing indeed has apparently been left to chance by the prosecution at the trial. The pertinent testimony of Jenalyn is hereunder reproduced at length.

> "ATTY. AMBROSIO:
>
> "Q Jenalyn, do you know the accused?
>
> "A Yes, ma'am.
>
> "Q If the accused Gilberto Motus is here can you point him up?
>
> "A Yes, ma'am.
>
> "Q Please point him up?
>
> "ATTY. AMBROSIO:
>
> Witness pointing to a person.
>
> "COURT:
>
> What is your name?
>
> "A Gilbert Motus.
>
> "ATTY. AMBROSIO:
>
> We would like to manifest that the accused when asked his name manifested that his name is Gilbert Motus.
>
> "Q Jenalyn, why do you know the accused?
>
> "A His my cousin-in-law.
>
> "Q Jenalyn, who is this cousin?
>
> "A Ate Luz.

"Q Jenalyn on March 3, 1994 can you remember where were you?

"A Yes, ma'am.

"Q Where were you?

"A I was playing in his passenger jeep.

"Q Whose jeep is this?

"A Gilbert Motus.

"Q When you say that you were playing in his jeep, was the jeep moving or was it park.

"A It was park.

"Q Where was this jeep park at that time?

"A Infront of our house.

"Q And where is your house?

"COURT:

"Q Anong address niyo?

"A Bicutan.

"Q Saan naka parada yong jeep?

"A Sa tapat po ng bahay namin.

"Q Saang lugar yong bahay niyo?

"A Bicutan.

"ATTY. AMBROSIO:

"Q Did you have anybody with you at that time?

"A Yes, ma'am.

"Q Who were with you?

"A My sister.

"Q Brother or sister?

"A Sister.

"Q And what is the name of your sister?

"A Jin Jin.

"Q And how old is Jin Jin.

"A Three (3) years old.

"Q While you were playing in the jeep what happened next?

"A After playing I went home.

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"Q What about your sister Jin Jin did she also go home?

"A Yes, ma'am.

"Q Where you able to reach your home?

"A Yes, ma'am.

"Q And then what happened at your house?

"A He called my sister Jin Jin.

"Q Who called your sister?

"A Gilbert.

"Q And what happened next after he called your sister?

"A Pumasok po sa bahay niya yong kapatid ko.

"COURT:

"Q Sino yong kapatid mo?

"A Si Jin Jin po.

"ATTY. AMBROSIO:

"Q What about you iha, what did you do when your sister entered Gilbert's house?

"A Kinuha ko po si Jin Jin sa bahay niya tapos po ni lock niya po yong pintuan.

"COURT:

"Q Sino ang nag lock ng pinto?

"A Si Gilbert po.

"ATTY. AMBROSIO:

"Q This door that you said he lock this is the door's of whose house?

"A Kay Gilbert po.

"Q And where were you when he lock the door?

"A Inside his house.

"Q And what about Jin Jin where was she when he lock the door?

"A Inside his house.

"Q After Gilbert lock the door iha, what happened next?

"A My sister playing a doll name Donna.

"COURT:

"Q What did you do?

"A I fell asleep in the house of Gilbert.

"ATTY. AMBROSIO:

"Q Iha, where in the house of Gilbert did you fall asleep?

"A At the side of my sister in the wooden bed.

"Q Saang parte ng bahay ni Gilbert?

"A Sa papag po.

"COURT:

"Q When you say papag do you mean wooden or foam bed?

"A Tabla po.

"ATTY. AMBROSIO:

"Q By the way Jenalyn, where is the house of Gilbert?

"A Beside our house.

"Q After you fell asleep on this papag wooden bed, can you recall what happened next?

"A Yes, ma'am.

"Q And what is this? Iha.

"A I woke up and when I woke up he was on top of me.

"Q When you say he was on top of you who is this that you saw on top of you when you woke up?

"A Gilbert.

"Q And can you tell us what was he doing on top of you?

"COURT:

"Q Jenalyn, ano ang naalala mo noong magising ka?

"A Niririape po ako.

"ATTY. AMBROSIO:

"Q When you say iha, that `niririape ka niya.' Can you tell us exactly what he was doing when you say niririape ka niya?

"A Ginagahasa niya po ako.

"Q How do you mean when you said `ginagahasa'? Ano ang kanyang ginagawa? Ano ang pagkakaintindi mo sa sinabi mong ginagahasa ka sa English sabi mo niririape. Anong ibig mong sabihin? Naiintindihan mo ba?

"A Hindi po.

"Q What exactly Gilbert do to you?

"ATTY. BERNABE:

May we manifest your Honor and make it off record that the Private complainant could not remember what happened that's why she cannot answer.

"COURT :

We will take note of that. Just give her time.

"ATTY. AMBROSIO:

May I be allowed to repeat the question, your Honor.

"COURT:

Yes, please for purposes of record.

"ATTY. AMBROSIO:

"Q Jenalyn, how did you know that Gilbert rape you?

"A When I woke up I saw his face.

"Q And where did you see his face?

"A Above me. `Sa taas ko po.'

"Q What did you feel when you saw Gilbert on top of you?

"A I feel pain.

"Q And where did you feel pain?

"ATTY. AMBROSIO:

Witness pointing to her private part your Honor.

"COURT:

Counsel, how do you call that part which part.

"Q How do you call the part of your body which you said you feel pain?

"A Hindi ko alam.

"Q Yong tinuro mo ano yong masakit? Anong tawag doon sa masakit?

"ATTY. AMBROSIO:

"Q Iha, anong tawag mo doon sa tinuro mo sa amin na masakit. Nahihiya ka?

"COURT:

"Q Anong tawag sa masakit?

"ATTY. BERNABE:

Witness cannot answer.

"ATTY. AMBROSIO:

"Q Jenalyn, bukod sa sakit meron ka pa bang nakitang iba?

"A Yes, ma'am.

"Q Anong nakita mo?

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"A Blood.

"Q Where did you see the blood?

"ATTY. BERNABE:

Make it off record that the witness cannot answer.

"COURT:

Recess.

"ATTY. AMBROSIO:

May I request to read back the last question.

"STENOGRAPHER:

"Q Where did you see the blood?

"A Pipi po.

"Q How did the blood look?

"A Red.

"Q Was it many?

"A There was a lot of blood.

"Q What about the accused did he see the blood?

"A Yes, ma'am.

"Q And what did the accused do?

"A He told me to take a bath.

"Q When you said that you woke up and then you saw Gilbert was on top of you, what was doing?

"A Pinipirat po ako.

"COURT:

"Q What do you mean when you say `pinipirat'?

"A Dinadagan po ako.

"ATTY. AMBROSIO:

"Q You said he was putting pressure on you. Where was he putting pressure on you?

"A Pipi ko.

"Q Can you tell the Court to what part of the body of the accused `pumipirat sa pipi mo'?

"A Titi.

"Q Iha, natatandaan mo kung ano ang suot mo noon?

"A Yes, ma'am.

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"Q Anong suot mo noon?

"A White sando and red short.

"Q And, what about Gilbert what was he wearing?

"A Short.

"Q What is the color?

"A Blue and white without shirt.

"Q What did Gilbert do with his clothes?

"A Hinubad niya po ang damit niya.

"Q When did he removed his short?

"A Before I feel asleep.

"Q When you woke up did Gilbert have any clothes on?

"A Opo sinuot na niya yong short niya.

"Q What about you did Gilbert do anything with your clothes?

"A No ma'am, nakababa lang po.

"COURT:

"Q Sino ang nagbaba?

"A Yong damit ko naka ganito (witness demonstrating) yong short ko binaba niya.

"ATTY. AMBROSIO:

Sabi mo iha, pinipirat ka ni Gilbert ano ang ginagawa mo noong naramdaman mong pinipirat ka niya?

"A Masakit po. Nasasaktan po ako.

"COURT:

"Q May sinabi ka ba. Hindi ka nagsalita. Si Gilbert nagsalita ba?

"A Opo.

"Q Anong sinabi niya sa iyo?

"A Noong umiyak ako sinasaksak na niya yong computer sabi niya ito na yong computer.

"Q Ano yong computer?

"A Computer break game.

"Q Sino ang may ari noong kanya yon?

"A Opo.

"Q Pagkatapos ano pa ang sinabi sa iyo?

"A Wala binuksan niya po yong pinto tapos lumabas na po ako.

"Q Walang sinabi sa iyo?

"A May sinabi.

"COURT:

"Q Ano?

"A Sabi niya maligo ka, maligo daw ako.

"Q Tapos?

"A Tapos sabi ko isusumbong kita kay Mama at Papa tapos bumili po siya ng gamot.

"Q Ano yong gamot na yon?

"A Mahaba pa ganoon (witness demonstrating) blue and white.

"Q Bulak, papel or plastic? Hindi gamot?

"A Hindi.

"Q Di ba ang tableta yong maliliit na gamot yong iniinom hindi ganoon?

"A Hindi po?

"Q Saan niya kinuha iyon?

"A Binili niya po.

"Q Saan niya nilagay yong binili niyang iyon?

"A Binigay po niya sa akin tsaka pina-inom niya sa akin.

"ATTY. AMBROSIO:

"Q Did you take this capsule that Gilbert gave you?

"A Yes, ma'am.

"Q And he gave you water when he gave you that capsule?

"A Yes, ma'am.

"Q Then what happened after that? Jenalyn.

"A I took a bath.

"Q Where did you take a bath?

"A Sa bathroom namin.

"Q Then after you took a bath. What happened next?

"A I change my clothes and sleep again."[5]

Jenalyn has not been shown to entertain or harbor any ill-feeling or some ulterior motives against the accused.[6] Still an innocent seven-year old child, Jenalyn, in the Court's view, could not have just made up so detailed a revelation of a sad abuse against her chastity as here. At all events, none has been presented that would convince the Court to ignore her declaration. On the contrary, her account of the incident is corroborated by other pieces of

evidence submitted by the prosecution. The medical certificates, as well as the findings of the physicians who examined Jenalyn, confirm the fact that the sexual assault has, in fact, taken place.

The Medico Legal Certificate issued on 22 March 1994 by the Philippine General Hospital would indicate that Jenalyn suffered - from traumatic "vaginal bleeding secondary to sexual abuse" requiring a "post repair of perineal lacerations."[7] Elaborating, Dra. Rosemarie Samson, a UP-PGH OB Gynecology, testified:

> "Q On March 4, 1994, did you have occasion to treat a certain Genalyn Olis?
>
> "A Yes.
>
> "Q And under what circumstances was this patient referred to?
>
> "A The patient was referred from the Department of Pediatric when she was initial seen because of vaginal bleeding. Genalyn Olis sustained laceration, vaginal laceration that need a repair so they have to refer the patient to the Department of OB Gyne.
>
> "Q And do you required or requested to bring certain document relating to the child? What document did you bring doctor?
>
> "A This is the chart of the patient.
>
> "Q Can you explain what is that?
>
> "A Hospital case number, laboratory . .
>
> "Q What surgical procedure did you undertake in the person of Genalyn Olis?
>
> "A Repair of vaginal laceration and the finding.
>
> "x x x x x x x x x
>
> "ATTY. AMBROSIO:
>
> "Q Ms. Witness in the diagnosis you wrote here that there was profuse vaginal bleeding which is secondary to sexual abuse. Could you please explain to us in layman's terms?
>
> "A That is bleeding uncontrolled bleeding secondary to sexual abuse, secondary to a forceful entry of something to a whole.
>
> "Q You are referring to?
>
> "A To the vagina.
>
> "Q And when you say hard object can this include a penis into direction?
>
> "A Yes.
>
> "Q And there is also this words cervico vagina suave repair perineal lacerations. Could you please explain to us?
>
> "A I got samples from the vagina and sent it for culture to determine if there was any bacteria. What's the other one?
>
> "ATTY. AMBROSIO:
>
> Repair perineal lacerations?
>
> "WITNESS:

Can I explain?

"ATTY. AMBROSIO:

Yes, please.

"WITNESS:

This is the vagina, this is the labia menorrhea and labia majora, this is hymen. Probably we all know the hymen but the hymen is okay and the portion between the anus and the vagina is called the perineal body. So this is the one that is lacerated and the vagina canal there was also at the hymen and the rest of the vagina.

"Q And how big was the laceration?

"A There is 1 cm laceration of the vaginal wall because 1 cm is deep.

"Q Where is that please?

"A Here and 1 cm laceration at the perineal body that the portion between the anus and the vagina, and there was 3 cm laceration into the vagina at 8 o'clock position.

"Q So there was three (3) lacerations?

"A Yes, and there was active bleeding."[8]

Another certification, that of the National Poisons Control and Information Service, U.P. College of Medicine, Philippine General Hospital, was to the following effect; viz:

"March 23, 1994

"Chief

"Medico-Legal Office

"National Bureau of Investigation

"Dear Sir:

"This is to certify that MS. JENALYN OLIS, 7 year old, female, was referred to the Toxicology Service on March 4, 1994 to rule out drug intoxication related to the incident of sexual abuse. Urine assays for several drugs were requested. Results from the examinations done at the laboratory of the National Bureau of Investigation were negative for amphetamines, opiates, cannabinoids and benzodiazepines. Serum and urine barbiturate levels done at the laboratory of the Department of Pharmacology, UP College of Medicine showed a serum barbiturate level of 4.337 mg/100 ml and a urine barbiturate level of 14.48 mg/100 presence of barbiturates in the biologic fluids of this patient who does not have any indication for the administration of the drug or whose parents deny administration of the drug may indicate that it may have been given to her without her knowledge.

"This certificate is issued upon the request of the mother for whatever purpose it may serve.

"(SGD)LYNN R. PANGANIBAN, M.D.

"Consultant"[9]

In her testimony before the court, Dr. Lynn Panganiban clarified the contents of the certification.

"Atty. Ambrosio:

What were the findings?

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"A As far as the Phenobarbital levels, this is one to a spectrophotometry test which means that certain wavelengths . . Binabasa 'yan base sa wavelengths. And this is sensitive for a particular type of Barbiturates whether acting or long acting. In this case, what was detected was Phenobarbital and the level was the blood was 4.33 ml. Or deciliter and urine is 14.48. So, the laboratory will refer to us and we will issue the interpretation as far as the result. So, if a patient who is allegedly not of Phenobarbital which is an indication usually for somebody who have choices . . multiple choices, if may thing. Somebody who is . . or that may present positive on the blood or the urine. But normally, a normal individual who is not taking it, the result is usually negative . . would be negative.

"Q In this case, would you tell us how much was the Barbiturate level in the .. the serum Barbiturate level and the urine barbiturate level?

"A If you're taking a medicine or drug that is positive of Phenobarbital, in that case, it is positive. If you interpret it whether that is in therapeutic level, it is in therapeutic level in the blood. What do you mean by therapeutic level? That means, in the blood, if I'm normally taking it, this drug I'm in maintenance, this drug . . the acceptable is 1.54.

Atty. Ambrosio:

And how much is Jenalyn Olis?

"A. Jenalyn Olis is 1.33, a very few about the therapeutic level. This was taken three (3) days after allegedly the incident happened.

"Q What was the level at that point when the patient was brought to the Emergency room?

"A She did not have levels yet, she did have levels three (3) days after.

"Q You said also in your Certification that 'Serum and urine barbiturate levels done at the laboratory of the Department of Pharmacology, showed the serum barbiturate level of 4.337 and a urine barbiturate level of 14.48 mg. over 100. Presence of barbiturates in the biologic fluids of this patient who does not have any indication for the administration of the drug or whose parents deny administration of the drug may indicate that it may have been given to her without her knowledge.' What is your basis for saying this in your Certification?

"A As I've said earlier, if the patient is a . . since if other patient is on maintenance of Phenobarbital, we could expect that level to be present in his body, but a patient with history or the parents that apparently who does not have notices, that would indicate a maintenance of treatment of Phenobarbital, that is significant itself.

"Atty. Ambrosio:

And what is the effect of Phenobarbital when administered of Miss Olis' age?

"A The patient usually will be unconscious, could be asleep and hardly to wake up.

"Q And would you be able to tell how long a child would be unconscious?

"A Yes, it would depend on what we called half-life. It depends on the dose taken by the patient. It could be twenty four (24) hours or it could be lasting for weeks based on the half-life."[10]

When the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established.[11]

The trial court also had good reasons to admit and consider the letter addressed by appellant to the parents of Jenalyn; it read:

"07-27-95

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"Tiyo Vic- Tiya Edna,

"Alam kong masakit para sa inyo ang nangyari kay `Nene.' Alam ko ang nararamdaman n'yo dahil magulang din ako.

"Pero sana bigyan n'yo naman ako isa pang pagkakataon para ipakita sa inyo na kaya kong magbago. Nagmamaka-awa ako sa inyo. Kung inaalala n'yo ang kinabukasan ni Nene, nakahanda akong balikatin ang lahat ng responsibilidad n'yo sa kanya. Bigyan n'yo lang ako ng konting panahon para maihanda ang mga kailangan niya kapag nakalabas ako. Hindi ko iaasa sa magulang ko ang mga kailangan ni Nene. Kundi sa sarili kong pawis manggagaling. Maaring hindi kayo maniwala o magtaka kayo kung papaano ko magagawa ang pag-ako sa kinabukasan ni Nene. Pero bigyan n'yo ako pagkakataon para ipakita sa inyo na kaya ko. Dahil kinabukasan din ng mag-ina ko ang nakataya at hindi ko hahayaan na masira ang pagkakataong ibibigay n'yo sa akin kung sakali. Dahil ayaw ko nang bumalik dito sa kulungan.

"x x x x x x x x x

"Kaya parang awa na n'yo. Isang pagkakataon na lang. Para sa mag-ina ko.

"Umaasa,

"GILBERT"[12]

And to his parents-in-law, appellant wrote:

"x x x Inaamin ko pong may natitikman na akong drugs noong binata pa ako. Pero hindi naman po naging masama ang takbo ng isip ko. Alam ko po kung ano ang ginagawa ko. Kapag mali, hindi ko ginagawa. Hindi po katulad ng ipinatikim sa akin ng anak ng may-ari ng jeep. Doon ko lang po naramdaman ang epekto nang makauwi na ako diyan sa inyo. Batid ng Diyos kung papaano ko pinilit na kontrolin ang nararamdaman ko pero hindi ko nakaya. Umibabaw na epekto sa akin ng drugs. Hindi ko na po alam ang sumunod na nangyari wala po akong natatandaan saka ko lang nalaman na may nagawa akong hindi maganda nang unti-unti nang nawawala ang epekto sa akin ng drugs.

"Batid din po ng Diyos ang pagnanais ko noon na aminin na ang nangyari. Lalo na po sa aking mga kapatid. Pero naunahan po ako ng pangamba, na baka hindi n'yo ako maunawaan. Dahil hindi ko talagang sinasadya. At dahil na rin po sa balitang nadinig ko na papatayin ako ng mga kapatid ng hindi nakakapagpaliwanag kaya napilitan po akong lumayo dahil lalong gumulo and isip ko."[13]

Appellant Motos conceded his authorship, during cross-examination, of the two letters.

"Q Mr. Witness the previous hearing you admitted having written letters, this letters to your parent-in-law and tiyo Vic and Tiya Edna?

"A Yes, ma'am.

"Q And when you wrote this letters, you wrote them voluntarily?

"A Ayon ho nga ang sabi ng asawa ko na sulatan ko ng sulatan yong nanay at tatay niya at tsaka sila tiya.

"Q Your wife told you to write these letters?

"A Hindi.

"Q And your wife dictated the contents of these letters?

"A Hindi.

"Q The contents of this letter are your own?

"A Opo.

"Q Nobody force you to write this letters?

"A Wala po.

"Q Nobody promise you anything to write this letter?

"A Iyon asawa ko basta ang sabi ng asawa ko, basta sulatan kong sulatan yong nanay at tatay niya na baka sakaling iurong yong demanda at sasama rin daw siya sa akin kung makakalabas ako.

"Q My question Mr. Witness, is did somebody promise you anything in exchange for writing this letter?

"A Wala."[14]

Certainly, one is not expected to ask for forgiveness unless some wrong has indeed been done, for to forgive means to absolve, to pardon, to cease to feel resentment against an account of a wrong committed or to give up a claim to requital from, or retribution upon, an offender.[15]

The crime of rape is defined and penalized under Article 335 of the Revised Penal Code, as amended, which expresses, as follows:

"Art. 335. When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by reclusion perpetua.

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

"When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

"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.

"2. When the victim is under the custody of the police or military authorities.

"3. When the rape is committed in full view of the husband, parent, any of the children of other relatives within the third degree of consanguinity.

"4. When the victim is a religious or a child below seven (7) years old.

"5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

“6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

“7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.”

The Court agrees with appellant that the trial court has erred in imposing the death penalty. Quite strangely, the trial court has failed to give any ratiocination in pronouncing that penalty. Neither does the complaint allege, nor does the evidence introduced show, any qualifying circumstance in the commission of the offense that can make the offense fall within the category of rape punishable by death. Verily, the only penalty that can be properly decreed is the lower indivisible penalty of reclusion perpetua. Conformably with prevailing jurisprudence, when this penalty is imposed in rape cases the victim should be entitled to P50,000.00 as civil indemnity and another P50,000.00 as moral damages for the injury evidently suffered.

WHEREFORE, the judgment of the Regional Trial Court, National Capital Judicial Region, Pasig City, Branch 264, is MODIFIED` by holding accused-appellant GILBERT MOTOS guilty beyond reasonable doubt of the crime of simple rape and sentencing him to suffer the penalty of RECLUSION PERPETUA and to pay the victim P50,000.00 by way of civil indemnity and another P50,000.00 in the concept of moral damages.

SO ORDERED.

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

Bellosillo, Kapunan, Quisumbing, and Ynares-Santiago, JJ., on official business abroad.

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[1] Records, p. 6.

[2] Rollo, pp. 136-141.

[3] Rollo, p. 73.

[4] Rollo, p. 70.

[5] TSN, 06 June 1995, pp. 4-14.

[6] People vs. Cañada, 253 SCRA 277.

[7] Records, p. 106.

[8] TSN, 20 February 1996, pp. 6-12

[9] Records, p. 108.

[10] TSN, 25 March 1996, pp. 10-13.

[11] People vs. Oarga, 259 SCRA 90.

[12] Records, pp. 124-125.

[13] Records, p. 128.

[14] TSN, 03 December 1996, pp. 6-8.

[15] People vs. De Guzman, 265 SCRA 228.

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