

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO TABANGGAY, ACCUSED-APPELLANT.

G.R. No. 130504. June 29, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In accusations involving incestuous rape, the relationship of the accused with the offended party as well as the latter's age must be alleged in the information and proven by the prosecution with competent evidence during the trial. A bare photocopy of the victim's Birth Certificate which is neither certified nor offered formally in evidence is not sufficient proof of her age.

Statement of the Case

For automatic review is a Joint Decision[1] dated May 16, 1997 issued by the Regional Trial Court (Branch 39)[2] of Calapan, Oriental Mindoro, in Criminal Case Nos. C-4775, C-4776 and C-4777, convicting Rolando Tabanggay on three counts of qualified rape and sentencing him to suffer the supreme penalty of death for each count.

In three separate Informations[3] all dated July 18, 1995, appellant was charged with the crime of rape allegedly committed once against his daughter Rynalyn Tabanggay, then 14 years old; and twice against his other daughter, Genalyn Tabanggay, then 13 years old. Except as to the time, the date and the name of the victim, the Informations similarly read as follows:

"That on or about the 14th day of May, 1994, at around 2:00 o'clock in the morning, in Barangay Sta. Mesa, Municipality of Victoria, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd design, and by means of force and intimidation, using a deadly weapon, wilfully, unlawfully and feloniously did lie and succeeded in having carnal knowledge with his daughter, RYNALYN TABANGGAY y RAMIREZ, 14 years old, against the latter's will and consent.

Contrary to law."

The other two Informations state that the accused likewise raped his other daughter, Genalyn, on two different occasions when she was only 13 years old.

On September 7, 1995, the accused-appellant, with the assistance of his counsel de oficio,[4] pleaded not guilty to the charges.[5] The prosecution and the defense thereafter agreed on a joint trial of the three cases, since common witnesses were to be presented.

The Facts

Version of the Prosecution

The evidence for the prosecution are summed up by the Office of the Solicitor General, as follows:[6]

"On May 14, 1994, at around 2:00 in the morning, private complainant Rynalyn Tabanggay, then turning 14 years old, was sleeping inside a nipa hut in Sta. Mesa, Victoria, Oriental Mindoro together with her sister Everlyn Tabanggay. Rynalyn was awakened when she felt that she was being kissed and hugged by appellant, her father, who told her to keep still. Appellant went on touching Rynalyn's breasts and vagina. Frightened, Rynalyn pleaded appellant to have mercy on her. However, appellant ignored Rynalyn's plea and instead told her "(a)nak, mahal na mahal kita(.) bago ang iba makinabang ako muna." Rynalyn tried to wake up her sister but failed to do so because appellant boxed her, thereby rendering her unconscious. Later, when Rynalyn regained consciousness, she felt pain all over her body and her knees were trembling. She also saw her vagina bleeding. When she tried to get out of the hut, appellant followed Rynalyn and, while holding on to her clothes, appellant threatened her not to tell the incident to anybody, otherwise he would kill her. Thereafter, appellant left the hut and went to the house of a neighbor.

"Meanwhile, Rynalyn and several others harvested palay. In the afternoon of the same date, she went home [to] San Antonio, also in Victoria, Oriental Mindoro, but she did not tell anybody about the sexual assault upon her.

"On May 17, 1994, Rynalyn left their house and went to Manila and applied for a job as a housemaid. She wanted to be far from home so that she could forget what appellant had done to her.

"While working as a housemaid in Manila, Rynalyn wrote her mother Gundina Tabanggay a letter, informing the latter that appellant raped her. After receiving the said letter sometime in August 1994, Gundina got angry and confronted appellant about the same. When informed that the contents of Rynalyn's letter were not good, appellant bowed his head and could not look straight in Gundina's eyes. And when Gundina asked appellant if, by bowing his head, appellant was admitting the truth, appellant replied that he committed something wrong to her and his daughter.

"Later, on June 8, 1995, Gundina looked for Rynalyn who had gone to Guinangan, Quezon. After finding Rynalyn in the said place, Gundina brought her home [to] Oriental Mindoro on June 12, 1995. The following day, Dr. Ma. Cristina A. Gonzales of the Oriental Mindoro Provincial Hospital examined Rynalyn. According to the Medical Certificate dated June 14, 1995 issued by Dr. Gonzales, Rynalyn suffered hymenal laceration at two, three, five, seven and eight o'clock positions. Appellant, through counsel, admitted that Dr. Gonzales [was] a medico-legal expert and that, in connection with her examination of Rynalyn, Dr. Gonzales issued the aforesaid medical certificate.

"Sometime in February 1995, private complainant Genalyn Tabanggay, Rynalyn's sister who was then turning 13 years old, was with her six other siblings inside a room in their house. Appellant approached Genalyn and told her to keep quiet. Thereupon, appellant touched Genalyn's private parts and kissed her on the left cheek. Appellant also inserted his penis into Genalyn's vagina. As a result of the rape, Genalyn's vagina and thighs became painful. She also cried. Thereafter, appellant left and went to his bed outside the room.

"The sexual assault upon Genalyn was repeated on March 19, 1995 at around 1:00 o'clock in the morning. On the said date and time, appellant went to the room where Genalyn was sleeping. Appellant placed himself on top of Genalyn and tried to insert his penis into her vagina, as a result of which Genalyn felt pain in her vagina. Appellant threatened to kill Genalyn if she would not keep quiet. This notwithstanding, Genalyn cried and cried until her sister Rosalyn, who was then 10 years old, was awakened. Later in the morning, after appellant had left the house and [gone] to the ricefield, Genalyn told her sister Rosalyn about the second rape incident. Rosalyn in turn told Gundina, upon the latter's arrival from Manila, that appellant raped Genalyn. Gundina then asked Genalyn if what Rosalyn had told her was the truth. Genalyn replied in the affirmative.

"On June 15, 1995, Dr. Romeo G. Andal of the Oriental Mindoro Provincial Hospital examined Genalyn. According to the Medical Certificate of even date, which was issued by Dr. Andal, Genalyn suffered hymenal laceration at three, six, nine, and eleven o'clock positions. Appellant, through counsel, also admitted that Dr. Andal [was] a medico-legal expert and that, in connection with his examination of Genalyn, Dr. Andal issued the aforesaid medical certificate."

Version of the Defense

Appellant's defenses, on the other hand, consist of alibi and denial. His counter-statement of the facts is as follows:[7]

"As regards Criminal Case No. 4775, said accused testified that while it is true that on May 14, 1994 he was in Sta. Mesa, Victoria, he was, however, with several male companions and they were then sleeping in a patio outside the nipa hut.

"That he could not possibly commit the crime of rape on Rynalyn Tabanggay because there were many persons in said place, especially when Rynalyn Tabanggay was in a nipa hut with several companions sleeping side by side. In fact, the accused testified that in the morning of said date they started threshing palay at the early dawn together with several companions and when they returned to the hut to take their breakfast, Rynalyn Tabanggay was there together with several male and female companions and everything was casual and normal.

"To corroborate the testimonies of the accused with respect to Criminal Case No. 4775, Rolly Rivas took the witness stand and testified that the accused was with him at the patio in Sta. Mesa, Victoria, Oriental Mindoro from the evening of May 13, 1994 up to morning of May 14, 1994. That it was even at the early dawn of May 14, 1994 when they started threshing palay until they went back to the nipa hut and took their breakfast and Rynalyn Tabanggay was there. That when they were taking their breakfast, everything was normal and casual.

"With regard to Criminal Case Nos. 4776 & 4777, the accused testified that [i]n the month of February 1995 he was in Sta. Mesa, Victoria, Oriental Mindoro working in a ricefield. That Barangay Antonio of Victoria, Oriental Mindoro [was] five (5) kilometers away from Sta. Mesa.

"That on March 19, 1995, said accused was in Barangay Alcate and was not in Barangay Antonio. Accused testified that he did not rape G[e]nalyn Tabanggay.

"Said accused likewise testified that these cases of rape were filed against him in order to put on said accused the blame on what the [T]iyo Untog of the offended parties did to them in Bongabon, Oriental Mindoro. That when the accused came to know that his wife was receiving money from this [T]iyo Untog and the offended parties were likewise receiving monies from this [T]iyo Untog, he felt suspicious that something bad was going on between his wife, the offended parties and this [T]iyo Untog, who [was] a relative of the accused. The accused then transferred their residence from one place to another against the will of his wife inasmuch as the accused was not a good provider. Domestic quarrels ensued between the accused, his wife and the offended parties until these cases of rape were filed against him because of bad blood."

Ruling of the Trial Court

After considering the evidence proffered by both parties and citing jurisprudence on rape cases, the trial court concluded as follows:

"All considered, the Court finds accused liable, as principal, for Rape (3 counts) defined and penalized under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act 7659, for having sexual intercourse by means of force and intimidation once with his daughter Rynalyn Tabanggay, then 14 years of age, and twice with his other daughter Genalyn Tabanggay, then 13 years of age, with the qualifying circumstance that the victim[s are] under eighteen year[s] of [age] and the offender is a parent in all these cases.

"A child especially that of [the] fair sex, looks up to [her] father with high regard and as protector and guardian against all evils and aggressions. If a father deflowers his daughter under eighteen years of age, he is a beast[;] he does not only deserve to be deprived of his parental authority over her but has no place in society. The crimes committed by herein accused, [those] of having sexual intercourse with his daughters under eighteen years of age by means of force and intimidation cry to the high heavens for the imposition of the most severe

punishment, i.e., death."

The court thus disposed of the cases in the following manner:

"ACCORDINGLY, the Court finds accused Rolando Tabanggay guilty beyond reasonable doubt, as principal, of the crime of Rape (3 counts) with the qualifying circumstance in all these cases that the victim is under eighteen years of age and the offender is a parent and hereby sentences him to suffer THREE DEATH PENALTIES, together with the accessory penalties provided by law, and to indemnify the victim Rynalyn Tabanggay [in] the amount of P50,000.00 in Criminal Case No. C-4775 and Genalyn Tabanggay the total amount of P100,000.00 in Criminal Cases Nos. C-4776 and C-4777, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"For services rendered as counsel de oficio, Atty. Rodrigo C. Dimayacyac is awarded attorney's fees in the amount of P1,500.00, subject to availability of funds."

Issue

In his appeal[8] before us, accused-appellant assigns this single error:[9]

"The trial court erred in finding the accused guilty of the crime of rape on three (3) counts."

The Court's Ruling

We affirm the trial court's finding that the appellant is guilty of rape on three counts. However, we reduce the penalty to reclusion perpetua, because of the failure to prove sufficiently the minority of the private complainants.

Main Issue:

Sufficiency of Prosecution Evidence

Appellant first argues that the testimony of Rynalyn did not establish with moral certainty that he had indeed raped her. She did not present any corroborating testimony despite her allegation that she was lying side by side with her companions when the incident took place. Besides, it remains un rebutted that Rynalyn had previously been sexually molested by her uncle for a monetary consideration. Furthermore, her examining physician was not presented to give an expert opinion on whether she had been truly raped on the date and at the time in question.[10]

With respect to Genalyn's testimony, appellant contends that the same was impressed with uncertainties. It was supposedly inconceivable that she was raped while lying side by side with several companions. Moreover, she was silent when her mother confronted her as to the truth of the rape incidents.[11]

Appellant further insists that private complainants and their mother were ill-motivated in filing the rape cases against him. There was allegedly bad blood between them because of his failure to give sufficient provision to his family.

The averments of appellant really boil down to the sufficiency of the evidence for the prosecution and the credibility of its witnesses to support his conviction on three counts of rape.

The settled guiding principles in prosecutions for rape are: (1) to accuse a man of rape is easy, but to disprove it is difficult though the accused may be innocent; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense.[12] On the other hand, there is also the principle that as long as the complainant's testimony meets the test of credibility, the accused may be convicted on the basis thereof.[13]

Guided by these judicial doctrines, the Court scrutinized all the pieces of evidence on record, especially the

testimonies of the complaining victims. We find no good reason to deviate from the findings of the trial court that appellant indeed raped Rynalyn and Genalyn. Their testimonies were straightforward, candid and spontaneous. If their tales were mere contrivances, the girls would not have remained composed and consistent throughout the grueling and lengthy interrogations by the prosecution and the defense attorneys.

The following is the candid testimony of Rynalyn as to the lustful acts inflicted upon her by appellant when she was only 13 years old:[14]

PROS. LUNA:

Q. You said that you [were] staying or sleeping in that hut of yours at Sta. Mesa, Victoria, Oriental Mindoro on May 14, 1994 at around 2:00 o'clock in the morning. What time did you wake up?

ATTY. DIMAYACYAC:

Your Honor, it assumes a fact not yet in evidence.

COURT:

Witness may answer.

A. At exactly 2:00 o'clock dawn I woke up, sir.

PROS. LUNA:

Q. Why did you wake up?

A. Because I felt that I was being hugged and kissed by my father Rolando Tabanggay, sir.

Q. And if Rolando Tabanggay, your father, is inside the courtroom, can you point to him?

A. Yes, sir.

Q. Please do so?

A. (Witness pointing to a person inside the courtroom who when asked answered that he [was] Rolando Tabanggay).

Q. How sure are you R[y]nalyn that the one who was kissing and embracing you was your father, the accused herein, Rolando Tabanggay?

A. Because he spoke and said 'huag kang malikot', sir.

Q. And after he made that remark, Huag kang malikot, what if any did he do?

x x x x x x x x

A. He went on kissing and hugging me and started touching the sensitive parts of my body, sir.

PROS. LUNA:

Q. In particular, what were the sensitive parts of your body that [were] hugged and touched by your father?

A. My sex organ and my breast, sir.

Q. And what if any did you feel when your private parts and your breast were touched by your father Rolando Tabanggay?

A. I was frightened and I pleaded, sir.

Q. Why did you plead?

A. Because I was afraid that something bad [would] happen to me and I said 'Tatay, huwag po, maawa kayo sa akin.'

Q. And after you said [those] words 'Tatay, huwag po maawa kayo sa akin', what happened next?

A. He did not listen to me and instead he said 'Anak, mahal na mahal kita bago ang iba makinabang ako muna'.

Q. What was your reaction to that remark of your father?

A. I was frightened and I was trying to wake up my sister but I could not do so, sir.

Q. Why?

A. I was not able to wake my sister up because when I was already holding the dress of my sister he boxed me, sir.

Q. And after that, what happened next if any?

A. I did not know anymore what happened after that because after [he boxed] my hand I pushed him and after [I pushed] him he boxed me on my stomach and after that I los[t] consciousness, sir.

Q. And who was that person whom you said you tried to push?

A. My father Rolando Tabanggay, sir.

Q. And who was that person who boxed you in the stomach?

A. Rolando Tabanggay, my father, sir.

x x x x x x x x

PROS. LUNA:

Q: The following morning, what happened?

ATTY. DIMAYACYAC:

The question is quite vague and the witness will be incompetent, Your Honor.

COURT:

Witness may answer.

A. On the following morning I could not stand up because my whole body was in pain and my knees were trembling but I still tried to stand up and I saw my sex organ bleeding, sir.

PROS. LUNA:

Q. When you noticed and saw your sex organ was bleeding, what if any did you do?

A. I was very [much] afraid when I woke up. It was still dawn and dark. I tried to get out of the house but he stopped me and asked me 'Saan ka pupunta'?

ATTY. DIMAYACYAC:

We move that the answer of the witness from 'but he stopped me' be stricken out from the records for not being responsive.

COURT:

Strike out that last portion from but he stopped me up to the end.

PROS. LUNA:

Q. And what happened next after you tried to get out of that house?

A. I went out but he followed me and asked me 'saan ka pupunta'.

Q. And who was this person who followed you?

A. My father Rolando Tabanggay, sir.

Q. And who was that person who said 'saan ka pupunta'?

A. Also my father Rolando Tabanggay, sir.

Q. And after your father said 'saan ka pupunta', what happened next if any?

A. After asking me 'Saan ka [p]upunta' he held me [by] my clothes (witness motioning the upper left portion of her breast) and remark this way: Don't ever tell this to anybody because if you do I would kill you and I was also frightened, sir.

Appellant's threat to kill her if she would reveal what he had done to her initially made Rynalyn keep to herself her harrowing experience. Repeatedly threatened, she just decided to leave their home and work in Manila. She related thus:

"Q. Now, Rynalyn, why did you not tell your sister what happened to you [o]n the early morning of May 14, 1994?

A. I was afraid to tell this to my sister because if I told her she would ask my father and if my father would know that I told this he might kill both of us, sir, because he had a threat.

Q. How about to the six persons [who would] be harvesting [o]n the morning of June 14 of 1994, why did you not tell them what happened to you on the morning of May 14, 1994?

A. Because I was afraid of the threat made by my father Rolando Tabanggay, sir.

Q. How about the evening of May 14 when you were already at your house at Barangay Antonino, you had a chance to tell your mother what happened to you on the early morning of May 14, 1994, why did you not inform your mother?

A. Because I was afraid of the threat made by my father, sir."[15]

Death threats made by the appellant-aggressor against his victim justify the delay in reporting rape cases.[16] It is not uncommon for a young girl to be intimidated into silence by the mildest threat against her life, more so when the rapist is allegedly her own father.[17] It is not surprising then that it took some months before Rynalyn was able to gather enough courage to reveal her dreadful experience at the hands of her attacker. Sometime in August 1994 while she was working in Manila, she finally wrote a letter to her mother about his beastly acts.[18] Upon reading it, Gundina confronted appellant, who was unable to deny his misdeed. The former related their confrontation in this manner:[19]

"Q. And what did you do, if any, after you received that letter and x x x read that letter?

A. I talked to my husband when he arrived, sir.

Q. And what time did he arrive from your farm?

A. It was already in the afternoon, sir.

Q. And what was your conversation all about?

A. I told him I [was] going to talk to him seriously and I asked him to tell me the truth, sir.

Q. And after saying [those] remarks that you [were] going to talk to him seriously and [you] asked him to tell the truth, what happened?

A. He admitted to me that he did something wrong to my daughter, sir.

Q. Please tell the Court, Gundina, the precise words that you conveyed to your husband, the accused herein Rolando Tabanggay?

A. I told him, "Tayo'y mag-uusap [nang] masinsinan at may dumating na sulat sa akin galing kay Rynalyn and the content of which [was] not good," sir.

Q. And what was the reaction of your husband, Rolando Tabanggay when you informed [him of] this matter x x x?

A. He could not say anything except that he bowed [his] head and he could not look straight in my eyes, sir.

Q. And what else did you do after your husband just kept silent and bowed his head?

A. I told him, "yan gang pagtungo mong yan ay umaamin ka ng totooan?"

Q. And what was the answer of your husband?

A. He replied in this manner: He told me that he committed something wrong to his daughter and to me, sir.

Other than practically admitting his wife's accusation, appellant also specifically sought the forgiveness of his victim after the filing of the Complaint. According to Rynalyn, when they saw each other at the police station after his arrest, he told her, "Anak, patawarin mo na ako sa ginawa ko sa iyo at sa iyong mga kapatid. Palabasin mo na ako dito at ako ay lalayo na at hindi na ako uulit." [20] A plea for forgiveness is analogous to an offer to compromise, which may be received in evidence as an implied admission of guilt. [21]

In the case of appellant's other victim, Genalyn, this was how she bravely recounted her sordid and traumatic experiences at the lustful hands of her own attacker: [22]

"PROSECUTOR LUNA:

Q. What unusual incident do you remember in the month of February, if there be any?

A. I was raped by my father, sir.

x x x x x x x x

Q. You say that you were raped in the month of x x x February of 1995. Please tell the Court how you were raped by your father in the month of x x x February of 1995?

x x x x x x x x

A. We were inside our room and he went beside me and told me, 'Huwag kang iimik.'

PROSECUTOR LUNA:

Q. And you said ["we were inside the room.["] Who were your companions during that time when your father

went beside you and said, 'Huwag kang iimik?'

A. My sister who was then only seven months old, sir.

Q. And what is the name of your sister who was then seven months old?

A. Joy, sir.

Q. And who else were present aside from your sister who was then seven months old inside the room when your father came near you and said, 'Huwag kang iimik'?

A. My other sisters, sir.

Q. How many all in all were present inside that room when your father came near you and said, 'Huwag kang iimik'?

A. We were seven then, sir.

Q. How about your mother, was she there?

A. She was not there, sir.

Q. Where was your mother then, at that time?

A. She was in Manila, sir.

Q. And what happened next after your father came near you and said, 'Huwag kang iimik'?

A. After that he touched my private parts and kissed me, sir.

Q. Kissed you where? In what part of the body?

A. On the face, sir.

Q. In what particular part of your face did your father kiss you?

A. Here, sir. (Witness touching her left cheek).

Q. And after your father touched your private part and kissed you in your cheek, what happened next if there was any?

A. I just felt that he was inserting something into my sex organ, sir.

Q. And after you felt that something [was] being inserted in your private organ what else did you do?

A. I was then crying and he told me to keep quiet, sir.

Q. And who was that person who told you to keep quiet?

A. My father told me, sir.

Q. Your father Rolando Tabanggay, the accused herein?

A. Yes, sir.

Q. And did you come to know [w]hat was the thing that was being inserted in your private organ or sex organ?

ATTY. DIMAYACYAC:

That is leading, Your Honor.

COURT:

Witness may answer.

A. Yes, sir.

PROSECUTOR LUNA:

Q. And what was that thing?

A. He was inserting his sex organ into my sex organ, sir.

Q. And after your father was trying to insert his sex organ to your sex organ, what happened next?

A. My sex organ was very painful and after that he left, sir.

Q. And why was your sex organ very painful?

ATTY. DIMAYACYAC:

The witness would be incompetent.

COURT:

Witness may answer.

A. Because he inserted something into my organ.

PROSECUTOR LUNA:

Q. What do you mean that he inserted something into your sex organ?

ATTY. DIMAYACYAC:

The answer is very clear, Your Honor. There is nothing to explain.

COURT:

Reform.

PROSECUTOR LUNA:

Q. And what happened when your father inserted his private organ to your sex organ?

ATTY. DIMAYACYAC:

No basis, Your Honor.

COURT:

Witness may answer.

A. My sex organ became very painful and also my thighs, sir.

PROSECUTOR LUNA:

Q. x x x [W]hat part of your thighs was painful?

A. My thighs, sir. (Witness touching her lap).

Q. And what did you do when you felt that your private organ was painful and your thighs were likewise painful?

A. I cried, sir, and after that he already left.

x x x x x x x x

Q. Now, how about in the month of March particularly on the first day of March, 1995 at around one o'clock in the morning what, if any, happened?

A. My father again went to my room and raped me, sir.

Q. And how? Please tell the Court how your father raped you?

A. I was then doing my project in school and when we already went to bed I felt my father beside me and after that he was already on top of me, sir.

Q. When your father was on top of you what, if any, was he doing?

A. He was then trying (pilit) to insert his sex organ into my sex organ, sir.

Q. And what happened next after your...

ATTY. DIMAYACYAC:

May we request, Your Honor, that the answer of the witness 'pilit' be recorded.

PROSECUTOR LUNA:

Q. What do you mean by 'Pilit na ipinapasok po'?

A. He was trying to insert his organ into my organ, sir.

Q. And after he was trying to insert his private organ to your private organ what happened next, if any?

A. He told me, 'Keep quiet' and if I would not keep quiet he would kill me, sir.

Q. And after your father made that remark, 'Keep quiet and if you will not keep quiet I will kill you.', what happened?

A. I cried and cried and then my sister Rosalyn was awaken[ed].

Q. And how old was your sister Rosalyn at that time?

A. Ten years old, sir.

Q. And what happened after your sister Rosalyn was awaken[ed]?

A. I just saw her staring at us, sir.

Q. And to whom were you referring when you said, 'at us'?

A. In the house where we were sleeping, sir.

Q. And when your sister Rosalyn was awaken[ed] what, if any, was your father doing?

A. My father told me and I quote, 'Ayaw mo ga, ang sarap.' He just told me that remark, sir.

Q. And what, if any, was your father doing when he made that remark, 'Ayaw mo ga, ang sarap.'?

A. He kissed me, sir, and when my sister was awaken[ed] and I was crying he covered my mouth, sir.

Q. And after your father covered your mouth, what happened next?

A. When my sister again fell asleep my father went out but he first kicked my sister Rosalyn.

Q. And what did you do when your father placed his hand on your mouth?

A. I was trying hard to remove his hand from my mouth but I could not do so, sir.

Q. Why?

A. Because he covered my mouth very tightly, sir.

Q. And what else, if any, did you do aside from trying to remove the hand of your father covering your mouth?

A. When I was trying to remove his hand he already left, sir."

Well-settled is the doctrine that no young and decent lass will publicly cry rape, particularly against her alleged father, if such were not the truth, or if justice were not her sole objective.[23] The revelation of a young barrio girl that she was sexually abused cannot be easily dismissed as a mere concoction, considering her willingness to undergo a public trial and relate the details of her defilement.[24] Moreover, no mother would use her own daughter, especially one of tender age, and subject her to the travails and the embarrassment of a public trial for rape, if she were not motivated by an honest desire to have the perpetrator punished.[25] For this reason, the Court usually gives credence to the testimonies of young rape victims, particularly in cases of alleged incestuous rape. Normally, no woman would be willing to undergo the arduous stages and the embarrassing consequences of a rape trial, if not to condemn an injustice and obtain retribution.[26]

Appellant's contention that Genalyn's testimony was impressed with uncertainties is totally unfounded. On the contrary, we find it candid, consistent and natural. Her inability to immediately give direct answers to some questions may be attributed to her innocence and naivete. In any case, the Court has ruled in the past that minor lapses in a testimony should be expected when the one testifying is recounting a debasing and humiliating experience such as rape.[27] The victim may not be able to remember and describe every detail of her repulsive experience, precisely because she might in fact be trying to expunge it from her memory, as it is too painful to remember.[28]

As regards appellant's argument that it was improbable for him to have raped his daughters in the same room where their other siblings were asleep, suffice it to say that this Court has held time and again that rape can be committed even in places where people congregate -- in parks, within school premises, inside a house where there are other occupants, and even in the same room where other family members are sleeping.[29] Lust is no respecter of time, place or kinship.[30] In contrast, there is no rule that rape can be committed only in seclusion.[31]

Hence, in rape cases, corroborative testimony is not absolutely necessary. The prosecution is not bound to present witnesses other than the victims themselves, for their testimonies alone, if credible and free from material inconsistencies, as in these cases, may be the sole basis of appellant's conviction.[32]

Appellant's further allegation that it was a certain Untog who sexually molested private complainants does not affect his culpability. Prior sexual intercourse with a different person is irrelevant in a rape case.[33]

Likewise unmeritorious is the argument of appellant that the nonpresentation of an expert medical witness is fatal to the rape charges against him. We have consistently held that a medical examination is not indispensable to a prosecution for rape, as long as the evidence on record convinces the court beyond doubt that conviction is proper.[34] Nevertheless, both offended parties underwent physical examination and offered in court their Medical Certificates.[35] Appellant's counsel manifested their admission of the genuineness of their Medical Certificates and the expertise of the examining physicians, as well as the willingness of the defense to dispense with their testimonies.[36] With these express declarations and waiver, appellant cannot now assail the absence of

an expert opinion on the medical conditions of private complainants.

We also find unsubstantiated appellant's imputation of ill motive to private complainants and their mother, an imputation he makes simply on the basis of his failure to provide sufficiently for his family's needs. Such flimsy argument deserves no consideration. It is very unlikely that a mother would expose her own minor daughters to the ignominy of a rape trial merely to retaliate against her husband's shortcomings as a family man.[37] It would have to be shown that private complainants were so morally depraved that, simply for this reason, they would concoct a story that would put appellant to death.[38]

As said earlier, no mother in her right mind would sacrifice her own daughters, young as they are, to the indignities of a rape trial, unless her sole motive is an honest desire to have the transgressor punished.[39] And ordinarily, no young innocent girls would admit having been raped, submit themselves to gynecological examinations, and participate in a public trial where they are made to narrate in detail their debasing experience; that is, unless the reason is to avenge their honor, even if such action would mean capital punishment for the man who gave them life. An imputation that they were merely motivated by ill will must be fully supported by convincing evidence, an evidence which appellant herein utterly failed to present.

All in all, the prosecution has certainly established beyond doubt that appellant is guilty of rape on three counts: one against Rynalyn and two against Genalyn. We now go to the proper imposable penalty.

Proper Penalty

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, prescribes the supreme penalty of death "[w]hen 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." Based on this provision, the trial court thus imposed the death penalty upon accused-appellant.

However, jurisprudence dictates that when the law specifies certain circumstances that will qualify an offense and thus attach to it a greater degree of penalty, such circumstances must be both alleged and proven in order to justify the imposition of the graver penalty. Recent rulings of the Court relative to the rape of minors invariably state that in order to justify the imposition of death, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused.[40] A duly certified certificate of live birth accurately showing the complainant's age, or some other official document or record such as a school record, has been recognized as competent evidence.[41]

In the instant case, we find insufficient the bare testimony of private complainants and their mother as to their ages as well as their kinship to the appellant. We note that a photocopy of Genalyn's Birth Certificate is included in the records of the case. But it was neither duly certified nor formally offered in evidence. Therefore, no probative value can be given to it. Furthermore, we cannot agree with the solicitor general that appellant's admission of his relationship with his victims would suffice. Elementary is the doctrine that the prosecution bears the burden of proving all the elements of a crime, including the qualifying circumstances. In sum, the death penalty cannot be imposed upon appellant.

In addition to indemnity, moral damages in an amount the Court deems just should be awarded to private complainants, without necessity for pleading or proof of the basis thereof. It is recognized that the victim's injury is inherently concomitant to and necessarily results from the odiousness of the crime, thus warranting the award of moral damages.[42] We find just and proper the amount of P50,000 as moral damages to each of private complainants.

WHEREFORE, we AFFIRM the Joint Decision of the Regional Trial Court of Oriental Mindoro, Branch 39, in Criminal Case Nos. C-4775, C-4776 and C-4777, finding Appellant Rolando Tabanggay guilty of rape on three counts, but REDUCE to reclusion perpetua the penalty imposed. In addition to paying indemnity in the amounts of P50,000 to Rynalyn Tabanggay and P100,000 to Genalyn Tabanggay, appellant is further ordered to pay moral damages in the amount of P50,000 to each of them.

SO ORDERED.

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

[1] Rollo, pp. 58-63.

[2] Presided by Judge Marciano T. Virola.

[3] Ibid., pp. 8-13.

[4] Atty. Nestor C. Atienza.

[5] Records, p. 25.

[6] Brief for the Appellee, pp. 4-8; rollo, pp. 81-85.

[7] Appellant's Brief, pp. 7-9; rollo, pp. 50-52.

[8] This case was deemed submitted for decision upon receipt by the Court of appellant's Reply Brief on December 19, 1998.

[9] Appellant's Brief, p. 10; rollo, p. 52.

[10] Appellant's Brief, pp. 10-11; rollo, pp. 53-54.

[11] Ibid., p. 11; *ibid.*, p. 54.

[12] *People v. Tresballes*, GR 126118, September 21, 1999; *People v. Tabion*, GR 132715, October 22, 1999; *People v. Quijada*, GR 114262, December 22, 1999.

[13] *People v. Tabion*, *ibid.*; *People v. Butron*, 272 SCRA 352, May 7, 1997.

[14] TSN, November 21, 1995, pp. 12-18.

[15] TSN, November 28, 1995, pp. 13-14.

[16] *People v. Tabugoca*, 285 SCRA 312, January 28, 1998; *People v. Sta. Ana*, 291 SCRA 188, June 26, 1998; *People v. Bartolome*, 296 SCRA 615, September 29, 1998.

[17] *People v. Bartolome*, *ibid.*; *People v. Villamor*, 297 SCRA 262, October 7, 1998; *People v. Medina*, 300 SCRA 98, December 11, 1998.

[18] Exh. A.

[19] TSN, October 12, 1995, pp. 18-19.

[20] TSN, November 21, 1995, p. 43.

[21] § 27, Rule 130, Rules of Court. *People v. Bartolome*, 296 SCRA 615, September 29, 1998; *People v. Ablog*,

309 SCRA 222, GR No. 124005, June 28, 1999.

[22] TSN, December 5, 1995, pp. 8-14.

[23] *People v. Castromero*, 280 SCRA 421, October 9, 1997.

[24] *People v. Molas*, 286 SCRA 684, March 2, 1998.

[25] *People v. Tumala Jr.*, 284 SCRA 436, January 20, 1998; *People v. Bersabe*, 289 SCRA 685, April 27, 1998.

[26] *People v. Lusa*, 288 SCRA 296, March 27, 1998; *People v. Clopino*, 290 SCRA 432, May 21, 1998; *People v. Ramirez*, 266 SCRA 335, January 20, 1997; *People v. Tabugoca*, 285 SCRA 312, January 28, 1998.

[27] *People v. Gementiza*, 285 SCRA 478, January 29, 1998; *People v. Sta. Ana*, 291 SCRA 188, June 26, 1998.

[28] *People v. Venerable*, 290 SCRA 15, May 13, 1998; *People v. Devilleres*, 269 SCRA 716, March 14, 1997.

[29] *People v. Escala*, 292 SCRA 48, July 8, 1998; *People v. Silvano*, 309 SCRA 362, GR No. 127356, June 29, 1999; *People v. Perez*, GR No. 129213, December 2, 1999.

[30] *People v. Silvano*, *ibid.*; *People v. Alimon*, 257 SCRA 658, June 28, 1996; *People v. San Juan*, 270 SCRA 693, April 4, 1997; *People v. Lagarto*, GR Nos. 118828 & 119371, February 29, 2000.

[31] *People v. Sangil Sr.*, 276 SCRA 532, July 31, 1997; *People v. Leoterio*, 264 SCRA 608, November 21, 1996; *People v. Talaboc*, 256 SCRA 441, April 23, 1996.

[32] *People v. Gementiza*, 285 SCRA 478, January 29, 1998; *People v. Lusa*, *supra*; *People v. Deleverio*, 289 SCRA 547, April 24, 1998.

[33] *People v. Tanail*, GR No. 125279, January 28, 2000; *People v. Cabiles*, 284 SCRA 199, January 16, 1998.

[34] *People v. Venerable*, 290 SCRA 15, May 13, 1998; *People v. Auxtero*, 289 SCRA 75, April 15, 1998; *People v. Taneo*, 284 SCRA 251, January 16, 1998.

[35] Exhs. H & I.

[36] TSN, February 28, 1996, pp. 6 & 7.

[37] *People v. Burce*, 269 SCRA 293, May 7, 1997.

[38] See *People v. Sangil Sr.*, *supra*.

[39] See note 34.

[40] *People v. Cula*, GR No. 133146, March 28, 2000; *People v. Tipay*, GR No. 131472, March 28, 2000; *People v. Brigildo*, GR No. 124129, January 28, 2000; *People v. Licanda*, GR No. 134084, May 4, 2000.

[41] *People v. Llamo*, GR No. 132138, January 28, 2000; *People v. Amban*, GR No. 134286, March 1, 2000; *People v. Balgos*, GR No. 126115, January 26, 2000; *People v. Magat*, GR No. 130026, May 31, 2000.

[42] *People v. Mahinay*, *ibid.*, citing *People v. Prades*, 293 SCRA 411, July 30, 1998.

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