

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DENNIS EDEM ALIAS “MAMERTO” EDEM, APPELLANT.

G.R. No. 130970. February 27, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The allegation and proof of the minority of the victim, without any allegation and proof of her relationship to the appellant, cannot qualify rape as heinous. Neither is minority of the offended party, by itself, an aggravating circumstance that can increase the penalty to death.

The Case

Before this Court for automatic review is the Decision[1] dated April 8, 1997 issued by the Regional Trial Court (RTC) of Bohol stationed in the City of Tagbilaran (Branch I) in Criminal Cases Nos. 9509 & 9510, finding Dennis Edem alias “Mamerto” guilty beyond reasonable doubt of two counts of rape and sentencing him to death. The decretal portion of the Decision reads as follows:

“WHEREFORE, premises considered, this Court finds the accused guilty beyond reasonable doubt of the crimes of rape committed in April, 1994, Grim. Case No. 9510 and the rape committed in March, 1995, Crim. Case No. 9509 punishable under Article 335 R.P.C. as amended by R.A. 7659, and hereby sentences the accused for each crime to the penalty of RECLUSION PERPETUA to DEATH.

“SO ORDERED.”[2]

The Complaints against appellant, subscribed to by the private complainant, Merly R. Papellero, read as follows:

Crim. Case No. 9509

“That sometimes on the month of March year 1995 particularly at Barangay Bolod, Panglao, Bohol, Philippines and within the preliminary jurisdiction of this Honorable Municipal Circuit Trial Court, the above-named accused with deliberate intent to have sexual intercourse, did then and there willfully, unlawfully and criminally thre[a]ten and forced me and succeeded in having sexual intercourse with me Merly Papellero an unmarried woman of good reputation and against my will.”[3]

Crim Case No. 9510

“That sometimes on the month of April year 1994 at more or less 12:00 o’clock noon particularly at Barangay Bolod, Panglao, Bohol, Philippines and within the preliminary jurisdiction of this Honorable Municipal Circuit Trial Court the above-named accused with deliberate intent to have sexual intercourse did then and there willfully, unlawfully and criminally took off my clothes and panty with the used of hunting knife as his threatening weapon and succeeded in having sexual intercourse with me Merly R. Papellero an unmarried woman of good reputation and against my will.

“That during the commission of the crime the following aggravating circumstances were present to wit:

- Abuse of superior strength [sic] and force.
- That a woman at the time of the commission of the crime was still minor.”[4]

Second Assistant Provincial Prosecutor Reinerio S. Namocatcat opted not to file Informations anymore and instead prosecuted the cases on the basis of the above-cited Complaints.[5]

When arraigned on December 22, 1995,[6] appellant, with the assistance of his counsel,[7] pleaded not guilty.[8] In due course, he was tried and found guilty of rape in both cases.

The Facts

Version of the Prosecution

In its Brief,[9] the Office of the Solicitor General summarized the facts as follows:

“Sometime in March 1994, private complainant Merly Papellero, eighteen (18) years old and a highschool student, was introduced to appellant by Marissa Dominguez, the sister of appellant’s common law wife, Nila Dominguez. At that time, appellant was in need of someone to work as a househelper. Having agreed to the proposal to work for appellant, Merly was fetched by Marissa from Carmen, Davao del Norte and taken to Barangay Bolod, Panglao, Bohol where she was to reside with appellant, Nila and Nila’s grandmother, Isidra Dominguez, at the latter’s house. Merly’s duties as a househelper included cooking, fetching water, washing clothes and general house cleaning.

“Barely three (3) weeks after Merly’s arrival, or sometime in April 1994, appellant, who had come from Tagbilaran City where Nila was expecting the delivery of their child, told her to stop working for the day and invited her to rest in the room and bed of Isidra. Isidra and appellant’s son had been sent by appellant to buy something in Barangay Camayaan. While Merly was resting, appellant, who was half-naked, started to touch her body and breast, kissed her on the neck, face and lips and removed her dress and panty. Merly shouted to attract attention from neighbors but appellant covered her mouth with dirty clothes, pointed a knife to the right side of her body and warned her to stop moving or be killed. Thus subdued, Merly could only watch appellant go on top of her, insert his penis into her vagina, and rape her. When he finished, appellant warned Merly not to tell anybody about the incident[;] otherwise, he would not hesitate to kill her, adding that he was a lieutenant in the Coast Guard, his father a judge, his mother a physician, his uncle an NBI man, his aunt a lawyer and that she would be declared as ‘missing in action.’ When Isidra arrived that afternoon, Merly just kept quiet out of fear.

“Sometime in March 1995, around midnight, Merly was sleeping in the kitchen of the same house, about five (5) to six (6) meters from where Isidra was sleeping and about nine (9) to ten (10) meters from the room where appellant and Nila were sleeping. When she noticed appellant approach her, Merly shouted, but appellant immediately covered her mouth with his hand and brandished a pistol. Appellant then lifted her skirt, removed her panty, placed himself on top of her and inserted his penis into her vagina. After satisfying his lust, appellant stood up and threatened her with bodily harm if she told anybody of the incident.

“Cowed by appellant’s threats, Merly did not report the rape incidents until May 1995, when she chanced upon one Arquilao Dominguez at the well where the latter regularly fetched water. Having told him of the rape incidents, Arquilao advised her to report the matter to the parish priest or to the teacher of the San Agustin Academy where she and A[r]quilao’s daughter were studying.

“When Merly subsequently enrolled at the school as a fourth year high school student, she reported the incidents to the parish priest, Father Crispin Varquez, through the confessional box. Fr. Varquez called a meeting of all the teachers of the school and informed them of Merly’s confession. Upon instructions from Fr. Varquez, Merly came back the following day to the convent and met Helen Ho, a Department of Social Welfare and Development (DSWD) officer, and some teachers. In the meantime, Merly left Isidra’s house and

stayed temporarily with Helen Ho.

“On August 16, 1995, Merly was examined by Dr. Marivic D. Nazareno at the Governor Celestino Gallanes Memorial Hospital. On August 18, 1995, Merly, assisted by Helen Ho, filed two (2) complaints for rape with the Panglao police authorities. Subsequently, the complaints were subscribed before Judge Felisa Vaño of the Panglao Municipal Trial Court. Subsequently, two (2) complaints for rape were filed with the Regional Trial Court in Tagbilaran City.”[10] (Citations omitted)

Version of the Defense

On the other hand, appellant narrates the facts in the following manner:[11]

“That he met the complaining witness Merly Papellero at Carmen, Davao del Norte, as she was introduced to him by Marissa Dominguez, the sister of his wife. He was informed that she (Merly) was interested to serve as a working student since she wanted to finish her studies. Whereupon it was agreed that she may be accepted either as a house helper [for] which she will be paid a monthly salary, or just be a working student whose school bills will be paid plus allowances and things for personal use. Coming to terms with [her,] accused brought her together with his sister-in-law from Carmen, Davao del Norte to Bolod, Panglao, Bohol, which is the residence of his wife Nila Dominguez. In view of the fact that he was in need of a helper his wife being pregnant at that time and was about to deliver she was hired first as a helper from the end of March 1994 to the end of April 1994. Later on because she wanted to pursue her schooling she opted to serve as a working student.

“To be prepared for any eventuality, considering that the means of transportation from Bolod, Panglao, Bohol, to Tagbilaran City, [was] very scarce, accused took the necessary precaution of bringing his infanticipating wife to Tagbilaran City to be near x x x the hospital therein, as early as April 6, 1994. During this time Merly Papellero stayed in Panglao, and served as the runner, whose task was to [bring food] and get the used clothes to be laundered at Bolod, Panglao, Bohol.

“Of course there were times that accused will go to Panglao, Bohol, yet he will not leave his wife unless Merly will arrive and replace him in watching his wife who was expecting childbirth. Thus there was never a time that he saw the complainant in Panglao in the month of April 1994, as they only met in Tagbilaran City. This [held] even more true during the third week of April 1994, as his wife actually delivered on April 21, 1994, at the Gov. Celestino Gallares Memorial Hospital in Tagbilaran City and accused as a devoted husband was always at her side.

“Although she often went to the barangay officials of Bolod, Panglao, on errands of the accused and the fact that she represented the latter [i]n a road training, she did not file any complaint against him and neither was the latter summoned to appear before any barangay official.

“The accused further stated that complainant also often went to the police station of Panglao, Bohol, even in 1994 yet. Matter of factly she went there sometime in May 1994, to report a stoning incident of the house of Isidra Dominguez, where a certain SPO3 Proculo Bunao responded. Then in August of that same year during the fiesta of Panglao, she again went to the police station to ask for police assistance as the sons and daughters and relatives of a certain Mesagrande [were] causing trouble at the house of Isidra Dominguez. The last time that she went to the said office was on July 15, 1995, when she was commanded to report the los[s] of accused[‘s] piglet in order that the incident will be blotted.

“To manifest that nothing untoward occurred to Merly Papellero in the month of April 1994, she opted in the following month of May 1994, to be just a working student and had herself enrolled by the accused at the St. Augustine Academy in Panglao, Bohol, in the third year high school in June 1994. Being so, she continued to reside therefor with the accused at the house of Isidra Dominguez, without reservations nor gripes or complain[t]s.

“Having been enrolled at the St. Augustine Academy, Panglao, Bohol, in June 1994, together with accused[‘s] wife Nila, and her sister Marissa, naturally she ha[d] to go to school daily and had to pass by the police station of Panglao, Bohol, as it was the regular route from Bolod to the Poblacion, Panglao, Bohol. In school she became familiar even with teachers and with classmates. She attended a different section from Nila and Marissa, which made it difficult for the latter to monitor her movements while in school. She finished the 1994 school year as the working student of the accused and did not have any gripes nor complain[t]s against the latter. The inevitable conclusion would be that probably she liked staying with the accused as her employer or guardian for she even enrolled in the 1995 school year, again through the latter’s auspices.

“Through all [that] time which lasted for more than a year it should be noted with emphasis that complainant never reported any sexual abuse that she allegedly experienced from the hands of herein accused, either to the barangay officials of Bolod, Panglao, Bohol, or to the police authorities of Panglao, Bohol, much less to her mentors in school, who could have easily extended protection.

“In the meantime, in November 1994 Merly went back to her place in Carmen, Davao del Norte presumably to visit her parents. Taking advantage of the fact that she will be in Davao del Norte, she was commanded to deliver P20,000.00, to the parents-in-law of the accused Ponferio Dominguez in Tagum, Davao del Norte, which was supposed to be his share in the transaction concerning a parcel of land of which he ha[d] a right. Unfortunately, the amount did not reach Porferio, as she was accordingly swindled at the bus terminal in B[u]tuan City on the way to Tagum, Davao del Norte. When pressed for further explanation on the fiasco, she merely stated that the money got lost along the way.

“In order that accused can have some explanation in case the relatives of his wife will come to claim the lost money Menly Papellero on December 4, 1994, voluntarily signed a Promissory Note, which runs this wise:

PROMISSORY NOTE

‘I do promise to pay, Mamerto (Dennis) Edem Jr, and his family the amount of (P20,000.00) twenty thousand pesos only, excluding the amount of groceries and some valuables that [were] lost last November 24 up to 27, 1994 at Butuan City, estimated of (P2,000) two thousand pesos, more or less in terms of monthly installment basis of (P2,000) two thousand pesos only, effective December 19, 1994 and every 19th of the month thereafter.

‘This promissory note is being executed in consideration of my failure to deliver the above-mentioned amount, groceries and some valuables to Mr. Porferio Dominguez of Tagum, Davao del Norte, thru negl[i]gence and carelessness on my way.

‘It is my free and voluntary act and deed in executing this affidavit.

‘Done [on the] 4[th] day of December, 1994, Panglao, Bohol, Philippines.’

“And to complement the foregoing she even executed in her own handwriting an unsigned note dated December 22, 1994, which contains a confirmation that she did execute the aforequoted promissory note. It should be observed that those documents were properly marked as Exhibits ‘3’, ‘3-A’, and ‘3-B’, and ‘4’ for the accused.

“To put a serious doubt on the credibility and veracity of the malicious accusations against the accused, Merly without any compunctions and second thoughts voluntarily, freely, and eagerly acceded to stand as the sponsor or godparent of the accused son Nial Carlo Alvin D. Edem, at his baptism at the Joseph’s Cathedral in Tagbilaran City, on June 17, 1995. She even serenely and gladly posed in the pictorial made after that solemn event. Be it noted that these assertions are aptly supported [by] the admission of complainant and by competent and convincing evidence for the accused marked as Exhs. ‘5’, ‘8’, and ‘9’ and its sub-markings.

“Emphatically, worthwhile mentioning here is the fact that the accused was able to explain the reason why this

ignominious case was filed against him. As can be drawn from his answer to the question: ‘what is the reason why she filed a case against you?’ In a voice reverberating with sincerity he stated: ‘Because of the fear of the los[s] of money and refusal to stop study[ing] and look for another job, to transfer to a landlord especially to Constaniana (supposed to be Justiniana) Mesagrande’, who is not in good terms with the accused .“[12] (Citations omitted)

Ruling of the Trial Court

Disregarding appellant’s denial, the court a quo gave full credence to the testimony of complainant. It found that once in April 1994 and once more in March 1995, appellant had carnal knowledge of her against her will.

The RTC also ruled that he used a knife with which to threaten and intimidate her for the first rape and a pistol for the second. It sentenced him to “the penalty of reclusion perpetua to death.”

Hence this automatic review before us.[13]

Issues

In his Brief, appellant faults the trial court with the following alleged errors:

“I.

That the court a quo gravely and miserably erred in issuing a verdict of conviction on herein accused despite the fact that the prosecution’s evidence was fraught with gross improbabilities, wanton irrationalities, aside from its being patently against human experience;

“II.

That it was an egregious blunder for the court a quo to give credence to complainant’s testimony although it was contradicted by the examining physician and was by itself incredible.[14]

In the main, appellant assails the credibility of private complainant.

Main Issue:

Credibility of Complainant

It is well-entrenched in this jurisdiction that factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, it was in a better position to decide the question of credibility.[15]

In this case, appellant has not given us sufficient and convincing reasons to disturb the finding of the RTC on the credibility of private complainant.

She narrated how she was raped in April 1994 as follows:

“FISCAL MAGDOZA:

Q

What happened when you were lying in the bed of Isidra Dominguez?

INTERPRETER:

Witness is still crying.

WITNESS:

I noticed that somebody ha[d] touched my body with [a] paw.

FISCAL MAGDOZA:

Q

x x x [W]hat part of your body did you notice that somebody [was] touching?

A

My breast.

Q

And who was that person who was touching your breast while you were lying [on] that bed of Isidra Dominguez?

A

Dennis Edem.

Q

Are you referring to the accused in this case?

A

Yes, Sir.

Q

And after you noticed that it was Dennis Edem who was touching your breast, what happened next?

INTERPRETER:

Witness is still crying.

WITNESS:

After touching my breast he kissed me.

FISCAL MAGDOZA:

Q

x x x [W]hat part of your body did he [kiss]?

A

My neck, xxx my face and xxx my lips.

Q

Now, after Dennis Edem kissed your neck, your face and your lips, what did he do to you next?

A

He took off my dress and my panty.

Q

What kind of dress were you wearing at that time?

A

I wore [a] duster.

Q

Were you wearing your bra at that time?

A

None.

Q

How about Dennis Edem, what was he wearing also at that time?

A

He wore short pants.

Q

How about in the upper portion of his body, what was he wearing?

A

None.

Q

You mean, he was naked from [the] waist up?

A

Yes, Sir.

Q

Did you not shout for help when Dennis Edem kissed you and removed your duster and your panty?

A

I shouted but he covered my mouth with the dirty clothes and odorous clothes.

Q

Did you not exert efforts to extricate [yourself] from the hold of Dennis Edem?

A

I cannot extricate myself from his hold because he poked with a knife at the right side of my body[.]

Q

Will you point to the court the portion of your body where Dennis Edem poked a knife?

A

Right here on my right side.

INTERPRETER:

Witness is pointing to the right side of her body.

FISCAL MAGDOZA:

Q

While poking a knife in the right side of your body, did you hear anything from Dennis Edem?

A

Yes, Sir.

Q

What words did you hear from him?

A

He [was] saying, '[D]o not keep on moving because I will kill you'.

Q

And what did you fe[e]l after you heard x x x the statement and [felt the] poking [of] a knife in your right side?

A

I was afraid.

Q

Why, did you really have in mind that Dennis Edem will kill you?

ATTY. BOISER:

Misleading Your Honor.

COURT:

Reform the question.

FISCAL MAGDOZA:

Q

Why [were you so afraid]?

A

I was afraid that he would kill me.

Q

After that, what did Dennis Edem do?

A

He placed himself on top of me.

Q

Now, after he placed himself on top of you, what happened next?

INTERPRETER:

Witness is still crying.

NOTE:

Question has been asked for two times but still witness did not answer, [she only kept] on crying.

WITNESS:

A

He inserted his penis in[to] my vagina.

FISCAL MAGDOZA:

Q

Was he able to insert [it] into your vagina easily?

ATTY. BOISER:

That is leading Your Honor because the question is answerable by yes or no.

FISCAL MAGDOZA:

Q

And what did you feel when Dennis Edem inserted his penis into your vagina?

A

He took x x x a long time to insert [it] but after that when his penis was inserted, I felt pain [i]n my vagina.

Q

How [was] Dennis Edem able to insert his penis into your vagina?

A

I did not know.

Q

What was his movement in the process of inserting his penis into your vagina?

A

He move[d] his buttocks push and pull position.”[16]

During cross-examination, Merly expounded on how the first rape was committed, which we quote hereunder:

“Q

When for the first time were you sexually abused by Dennis Edem?

A

I was sexually abused April, 1994.

Q

Can you give us the exact day?

A

I cannot remember the exact day.

Q

What was the time when you were allegedly sexually abused for the first time?

A

Noon.

x x x x x x x x

Q

What time did Dennis Edem arrive in the house [on] that day whe[n] you were allegedly sexually abused?

A

It [was] about noon time.

Q

Did I get you right that when Dennis Edem arrived, Isidra Dominguez was still in the house?

A

Yes sir.

Q

How many minutes [passed] when Isidra Dominguez allegedly was commanded by Dennis Edem?

A

A little later.

Q

Would you please tell the court where Isidra Dominguez was allegedly commanded by Dennis Edem?

x x x x x x x x

A

x x x what I heard [was] that she was instructed to buy something in Camayaan together with the child.

x x x x x x x x

Q

And then afterwards what happened?

A

After that, he told me x x x, 'Merlie you go upstairs and take your rest.'

Q

Did it not occur to you that it was something strange that your employer would command you [to] take your rest while you were busy doing the laundry?

A

I did not entertain any bad thought at that time because I considered him as my [parent].

Q

After you were ordered to stop your laundry, what did you do next?

A

I [lay] down and rest[ed o]n the bed of Lola Isidra because he told me to rest there.

x x x x x x x x

Q

After you [lay] on the bed of Isidra Dominguez, what happened next?

A

I felt something bad because there was someone touching my body.

Q

What did you do when you noticed that there was someone allegedly touching your body?

A

I woke up and I tried to rise but he prevented me [from] stand[ing] up and forced me to lie down again.

Q

That was the only move that you did during the time that Dennis Edem was allegedly touching your body?

A

I was about to shout but he covered my mouth with a piece of cloth, I do not know whether that was [a] handkerchief.

Q

And you did not struggle to prevent Dennis Edem [from] allegedly do[ing] some evil deeds [to] you?

A

No because I was afraid, he was threat[en]ing me.

Q

Because you mentioned that Dennis Edem was allegedly placing a cloth [on] your mouth, could you please tell us how many hands he used when he placed that piece of cloth [on] your mouth?

A

Only one hand.

Q

What did he do with the other hand, x x x the hand that prevent[ed] you from rising up?

A

One hand of his was the one he used in covering my mouth with a piece of cloth while the other one [was] holding a knife.

COURT:

What hand did he use in covering your mouth?

A

His left hand.

Q

And his right hand was the one holding a knife?

A

That is correct Your Honor.”[17]

Referring to the rape committed in March 1995, complainant testified during her direct examination as follows:

“Q

When was that last [time] you were sexually abused or raped by Dennis Edem?

A

March, 1995.

Q

You cannot remember what was the particular date [in] March, 1995?

A

No.

Q

In what particular place [were] you sexually abused by the accused in this case in the month of March, 1995?

A

At Bolod, Panglao, Bohol.

Q

In what particular place in Bolod?

A

In the house of Isidra Dominguez.

Q

And you remember what time was that?

A

It was nighttime or at midnight.

Q

In what particular place in the house of Isidra Dominguez [were] you raped for the last time by Dennis Edem?

A

In the place where I [was] sleeping in the kitchen.

Q

Tell the Court how [the] accused sexually abused you in that particular evening of March, 1995?

A

He came to the place where I was sleeping.

Q

How far [was] that place [where] you were sleeping [from] the place [where] x x x Isidra Dominguez used to sleep?

A

Farther.

Q

Can you indicate inside the courtroom the distance starting from the place where you were sleeping?

A

Some[where] here where I am sitting to the cabinet measuring about 5-6 meters.

Q

You said also that Dennis Edem and his common-law wife ha[d] another room inside the house of Isidra Dominguez[;] how far was that room [from] the place where you were sleeping in the kitchen?

A

From here where I was [seated] to the last cartoons to the wall measuring about 9-10 meters.

Q

So, the house of Isidra Dominguez is quite big?

A

Yes, Sir.

Q

You said Dennis Edem arrived at the place where you were sleeping[;] now, what did he do after you noticed his arrival?

A

I was able to shout but he covered my mouth with his hand.

Q

Aside from covering your mouth [with] his hand what else did he do?

A

He ordered me not to shout because he [w]as carrying with him a pistol[,] then he lifted up my skirt.

Q

And do you know what is [a] pistol?

A

Yes, Sir.

Q

What is it?

A

It x x x explodes.

Q

After you heard from Dennis Edem [telling you] not to shout because he was bringing a pistol, what did you feel?

A

Yes, I was very afraid.

Q

Now, after Dennis Edem lifted your skirt[,] what else did he do to you?

A

He took off my panty.

Q

And you did not resist so that Dennis Edem [would] not [be] successful [in] his desire to sexually abuse you?

A

I tried.

Q

And you were not successful?

A

I did not succeed.

Q

Why?

A

Because he warned me [that] if I would move and extr[i]cate myself from him he would kill me.

Q

After removing your panty what did he do to you?

A

He inserted again his penis [in]to my vagina.

Q

You mean he placed himself on top of you?

ATTY. BOISER:

Misleading Your Honor.

FISCAL MAGDOZA:

Q

And was his penis able to be inserted [in]to your vagina?

A

Yes, Sir.

Q

And what did you feel?

A

I felt pain again.

Q

Later on, what did Dennis Edem do considering that he ha[d] already inserted successfully his penis [in]to your vagina?

A

He kissed my lips and my face.

Q

After that, what did he do?

A

He made a push and pull action with his penis in my vagina.

Q

After the push and pull movement of his buttocks, what did Dennis Edem do later on?

A

He stood up.

Q

Whe[n] he stood up, did you hear words from him?

A

Yes, Sir.

Q

What did you hear from him?

A

He threatened me within that [I would be] alleged missing in action.

Q

And what did you feel at that time?

A

I [was] also afraid seriously.[18]

The fact that complainant did not forcefully resist the sexual advances of appellant will not negate the rape. It is not necessary that she should have resisted unto death.[19] Intimidation by appellant with the use of a knife and threatening words was proven beyond reasonable doubt. When the victim submits to the rapist's embrace because of fear for her life and personal safety, physical resistance need not be established.[20]

As we held in *People v. Sagun*,[21] “[c]omplainant’s tears add poignancy to verity born out of human nature and experience.” Furthermore, “no woman would subject herself to the rigors of a public trial, describing before total strangers the shameful, humiliating and degrading experience of the sexual assault, unless she was motivated to tell the truth.”[22]

Appellant harps on the failure of complainant to disclose immediately to her parents, any of her teachers or friends or even the police the sexual abuse committed against her. He contends that this failure, together with the fact that she continued to stay in Isidra’s house as househelper for more than a year after the first sexual abuse, makes her allegation of having been raped incredible.

This contention is bereft of merit. Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of a witness if the delay is satisfactorily explained.[23] The records show that complainant did not immediately run away or disclose the abuse done to her because of the fear caused by the threats leveled by appellant. Furthermore, he constantly repeated these threats, leading her to believe that they would be carried out if she revealed her ordeal to anyone or if she ran away from Isidra’s house. She testified thus:

“Q

You said after [you had been] sexually abused by Dennis Edem, he stood up[:]; did you hear some words from him if any?

A

Yes, Sir.

Q

What did he tell you?

A

He warned me not to talk about the incident to anybody even to my parents and to any neighbors because he would not hesitate to kill me and anybody who will help me and besides, he told me that his father is a retired judge and his mother is a physician and his uncle is an NBI member and his auntie is a lawyer and he is lieutenant of the coastguard and if I would bear to talk [about] the incident he would not hesitate to kill me and he told me that I would be missing in action and he ha[d] connection in the police station in Panglao and Dauls.

Q

After you heard those statements from Dennis Edem what did you feel?

A

I was really afraid.

x x x x x x x x

Q

[What] do you call Isidra Dominguez?

A

I call her Lola.

Q

When Isidra Dominguez arrived together with Gerson, did you report the incident [or] the fact that you were raped by Dennis Edem?

A

No.

Q

Why?

A

Because I was afraid.

Q

Afraid of what?

A

I was afraid of what he warned me [about].

Q

What was that warning that you were afraid of?

ATTY. BOSIER:

Already answered, already Your Honor the previous question.

COURT:

Answer.

WITNESS:

That he would kill me.

FISCAL MAGDOZA:

Q

Do you believe that he will really kill [you] that time?

A

Yes, Sir.[24]

x x x x x x x x

Q

What did you hear from him?

A

He threatened me x x x that [I would be] alleged missing in action.

Q

And what did you feel at that time?

A

I [was] also afraid seriously.

x x x x x x x x

Q

Why would you [escape] from the household of Dennis and the house of Isidra Dominguez after you were raped for the first time [i]n April, 1994?

A

Because I was afraid that [I would be] alleged killed and more people will be involved.

Q

So after[wards] in the last [rape] committed by Dennis Edem in March, 1995, you did not also report that incident to Isidra Dominguez?

A

I did not report also.

Q

Why?

A

Because he told me that it would be useless if I would report because Isidra Dominguez and his common-law wife were] siding with] him.[25]

x x x x x x x x

ATTY. BOISER:

Q

You did not bother to tell the police authorities in Panglao especially [because] the police station is situated at the Poblacion of Panglao where the police station is?

A

I agree that I did not report because of my fear. As a matter of fact, the accused told me that he ha[d a] good connection with the police authorities of Panglao because the Chief of Police [was] his classmate.

Q

When you went to the Poblacion of Panglao, the accused was not accompanying you?

A

No, he would tell me that he ha[d] a reporter in the school.

Q

When did the accused tell you about that statement?

FISCAL MAGDOZA:

We would like to make it of record that the witness victim is crying.

[W]itness:

As time [passed], he always warn[ed] me not to report because he would kill me if I will report and the police authorities of Daus and Panglao ha[d] a good connection with him.”[26]

In *People v. Javier*,^[27] the Court held that a charge is not undermined by a delay in filing it, particularly if it is grounded on death threats from the accused. Jurisprudence on the matter further states:

“Delay in reporting the rape incidents, in the face of threats of physical violence, cannot be taken against the victim.”^[28]

“It is not uncommon for a young girl at the tender age of 1[8] years to be intimidated into silence and conceal for some time the violation of her honor, even by the mildest of threat against her life.”^[29]

“Delay in reporting an incident of rape does not create any doubt over the credibility of the complainant nor can it be taken against her.”^[30]

Complainant is a young, unsophisticated barrio lass living far away from home with no close relatives around. Aside from the threats on her life and her status as a working student, she was not given any salary for her work in the household of appellant.^[31] Understandably, running away from him to return home to Davao was not an immediately feasible or even affordable option.

Appellant then points to the Medical Certificate which states: “Genitals = grossly normal.” He posits that the absence of a finding of hymenal lacerations and wounds in complainant’s vagina negates the rapes.

His contention has no merit. Medical findings of injuries in the victim’s genitalia are not essential to a rape conviction.^[32] Furthermore, contrary to allegations of the defense, the findings of the medicolegal officer support the charge that complainant was sexually violated. The former explained in open court that the latter’s hymen was no longer intact and could no longer be identified.^[33] The doctor further said that such a state could have been the result of the insertion of a male sex organ into complainant’s vagina.^[34]

Also, the absence of any sign of external injuries does not negate rape in these cases, which were filed more than a year after the first and five months after the latest incident. “Absence of external signs or physical injuries on the victim does not negate the commission of rape, specifically in a situation where complainant filed the rape case a year after the incident, when the injuries have healed.”[35]

The alibi of appellant -- that he was in Tagbilaran City -- cannot stand against the positive identification made by complainant. Also, the record fails to disclose even a shred of evidence to corroborate the alibi. Since it was established solely by the accused himself, it becomes even less worthy of credence.[36] Furthermore, as admitted by him in his “Manifestation of Personal Sentiments x x x” it takes only 25 minutes,[37] more or less, to travel from Tagbilaran City to the house of Isidra in Bolod, Panglao.

For the defense of alibi to be given weight, it must be shown that it was impossible for the accused to have been present at the place where the crime was perpetrated at the time of its commission.[38] In the instant case, it was not impossible for appellant to have been in Bolod that fateful noontime in April, as credibly testified to by complainant. He could have easily gone from Tagbilaran to Bolod, assaulted complainant, then gone back to Tagbilaran -- all within a short span of time. Hence, the RTC was correct in disregarding his alibi.

As for the rape committed in March 1995, appellant merely proffered an unsubstantiated denial. Denial, like alibi, if not supported by clear and convincing evidence, is negative and self-serving and bears no weight in law.[39] It is a time-honored principle that between the positive and categorical testimony of a rape victim on the one hand and the accused’s bare denial on the other, the former generally prevails.[40]

Proper Penalty

The trial court erred in imposing the penalty of “reclusion perpetua to death” for each crime. Although that is the penalty prescribed by law[41] for rape committed with the use of a deadly weapon, the trial court cannot just impose the whole range as penalty. It is tasked to go further. After taking into account the presence or absence of aggravating or mitigating circumstances, it must determine what specific penalty, within the range prescribed by law, to impose. Furthermore, the presence of these circumstances must both be alleged in the information and proven during the trial.

The Complaint in Criminal Case No. 9509 does not mention any aggravating or qualifying circumstance. In fact, none was proven. Hence, the crime is simple, not qualified, rape. The penalty is thus reclusion perpetua.

The Complaint in Criminal Case No. 9510 states that the rape was committed with the aid of a knife, a contention that was proven beyond reasonable doubt during the trial. Hence, we apply paragraph 2 of Article 335 of the Revised Penal Code, which prescribes the penalty of reclusion perpetua to death.

In this case, the Complaint further alleges that the victim “at the time of the commission of the crime was still minor.” However, this circumstance alone, without the concurrent allegation and proof of her relationship to the appellant, is not recognized by law as a qualifying circumstance. Neither is the mere minority of the victim[42] included in the enumeration of aggravating circumstances under Article 14 of the Revised Penal Code. Hence, the allegation and proof of minority by itself without the allegation and proof of relationship cannot justify the imposition of the death penalty.

Neither can the aggravating circumstance of abuse of superior strength be appreciated, because “the use of the knife x x x already absorbed abuse of superior strength:”[43]

“Since the rape was committed with the use of a knife, a deadly weapon, the crime is therefore punishable by reclusion perpetua to death. The aggravating circumstance of taking advantage of superior strength stated in the Information cannot increase the imposable penalty to death. Taking advantage of superior strength or abuse

of superior strength means to purposely use excessive force out of proportion to the means available to the person attacked. It is abuse of superior numbers or employment of means to weaken the defense. This circumstance is always considered whenever there is notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority notoriously advantageous [to] the aggressor [and] deliberately chosen by him in the commission of the crime. To properly appreciate it, it is necessary to evaluate not only the physical condition of the parties and the arms or objects employed but the incidents in the total development of the case as well.

“That accused-appellant deliberately took advantage of his superior strength by using excessive force on his victim has not been proven. The use of the knife already qualified the rape; and this absorbed the generic aggravating circumstance of abuse of superior strength. Moreover, like the crime of parricide by a husband on his wife, abuse of superior strength is inherent in rape. It is generally accepted that under normal circumstances a man who commits rape [against] a woman is physically stronger than the latter. There being no aggravating or mitigating circumstance in the instant case, the penalty to be imposed should be reclusion perpetua.”[44]

All told, under Article 63 of the Revised Penal Code, the imposable penalty in Criminal Case No. 9510 is also reclusion perpetua, not death.

Civil Liability

The RTC also erred in not awarding damages to private complainant. In *People v. Catubig*,^[45] the Court validated the grant of moral damages to the rape victims in the amount of P50,000 and explained that the “award rests on the jural foundation that the crime of rape necessarily brings with it shame, mental anguish, besmirched reputation, moral shock and social humiliation to the offended party.” In each of the two cases at bar, the offended party also deserves to receive the amount of P50,000 civil indemnity, the equivalent of compensatory damages; and in Criminal Case No. 9510, exemplary damages (on account of the use of a deadly weapon) in the amount of P25,000.^[46]

WHEREFORE, the appealed Decision in Criminal Cases Nos. 9509 and 9510 is MODIFIED. In both proceedings, appellant is found GUILTY of simple, not qualified, rape. Accordingly, in each case, he is sentenced to the penalty of reclusion perpetua and to pay the victim P50,000 as indemnity ex delicto and P50,000 as moral damages. In addition, he shall pay P25,000 as exemplary damages in Criminal Case No. 9510 in view of the use of a deadly weapon in that case. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Buena, Ynares-Santiago, De Leon Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Written by Judge Teofilo B. Buslon Jr.; rollo, pp. 27-32; records, pp. 80-85.

[2] RTC Decision, p. 6; rollo, p. 32; records, p. 85.

[3] Records, p. 1.

[4] *Ibid.*, p. 4.

[5] *Id.*, p.6.

[6] *Id.*, p.16.

[7] Atty. Maximino L. Boiser, Jr.

- [8] Order dated December 22, 1995; records, p. 16.
- [9] Appellee's Brief was signed by Assistant Solicitor General Carlos N. Ortega and Solicitor Magtanggol M. Castro.
- [10] Appellee's Brief, pp. 3-6; rollo, pp. 129-132.
- [11] Appellant's Brief, pp. 69-99. This was signed by Atty. Maximino L. Boiser Jr.
- [12] Ibid., pp. 75-79.
- [13] This case was deemed submitted for Decision on May 7, 2001, upon receipt by this Court of appellant's "Manifestation of Personal Sentiments," which was treated as a Supplemental Brief. This was signed by appellant himself.
- [14] Appellant's Brief, p. 12; rollo, p. 79.
- [15] *People v. Plana*, GR No. 128285, November 27, 2001; *People v. De Guzman*, 333 SCRA 269, June 8, 2000.
- [16] TSN, March 4, 1996, pp. 10-13.
- [17] TSN, April 11, 1996, pp. 8-15.
- [18] TSN, March 4, 1996, pp. 16-19.
- [19] *People v. Igdanes*, 272 SCRA 113, May 5, 1997.
- [20] *People v. Quiamco*, 268 SCRA 516, February 19, 1997; *People v. Malabago*, 271 SCRA 464, April 18, 1997; *People v. Sagucio*, 277 SCRA 183, August 11, 1997; *People v. Oliver*, 303 SCRA 72, February 11, 1999.
- [21] 303 SCRA 382, February 19, 1999, per Quisumbing, J.; *People v. Alquizalas*, 305 SCRA 367, March 25, 1999.
- [22] *People v. Mangila*, GR Nos. 130203-04, February 15, 2000, per curiam; *People v. Ayo*, 305 SCRA 543, March 30, 1999.
- [23] *People v. Fuensalida*, 281 SCRA 452, November 6, 1997.
- [24] TSN, March 4, 1996, pp. 14 and 15; underscoring supplied.
- [25] TSN, March 4, 1996, pp. 18 and 19; underscoring supplied.
- [26] TSN, June 4, 1996, p. 13; emphasis supplied.
- [27] 311 SCRA 122, July 26, 1999.
- [28] *People v. Sandico*, 307 SCRA 204, May 18, 1999, per Bellosillo, J.
- [29] *People v. Bea Jr.* 306 SCRA 653, May 5, 1999, per Romero, J.; *People v. Teves*, 310 SCRA 788, July 20, 1999, Davide Jr., CJ.
- [30] *People v. Montefalcon*, 305 SCRA 169, March 25, 1999, Purisima, J.
- [31] TSN, July 9, 1996, p. 6.
- [32] *People v. Zaballero*, 274 SCRA 627, June 30, 1997.
- [33] TSN, February 19, 1996, p. 6.

[34] Ibid.

[35] *People v. Villaluna*, 303 SCRA 518, February 23, 1999, per Pardo, J; *People v. Managaytay*, 305 SCRA 316, March 25, 1999.

[36] *People v. Paraiso*, 319 SCRA 422, November 29, 1999; *People v. Caguioa Sr.*, 259 SCRA 403, July 26, 1996.

[37] Rollo, p. 235.

[38] *People v. Agoncillo*, GR No. 138983, May 23, 2001; *People v. Caguioa Sr.*, *supra*; *People v. Barera*, 262 SCRA 63, September 19, 1996; *People v. Pontilar Jr.*, 275 SCRA 338, July 11, 1997.

[39] *People v. Valdez*, 304 SCRA 140, March 3, 1999; *People v. Taclan*, 308 SCRA 368, June 17, 1999; *People v. Bonghanoy*, 308 SCRA 383, June 17, 1999; *People v. Capillo*, 319 SCRA 223 November 25, 1999.

[40] *People v. Cambi*, 333 SCRA 305, June 8, 2000.

[41] Article 335, Revised Penal Code.

[42] Contrast this with the minority of the offender which, under Art. 68 of the Revised Penal Code, is a privileged mitigating circumstance. Also, under RA 7659, when the offended party is “below seven (7) years old,” the penalty shall be death — a single indivisible penalty.

[43] *People v. De Leon*, 320 SCRA 495, December 10, 1999, per Puno, J. See also *People v. Padilla*, 301 SCRA 265, January 20, 1999; *People v. Onabia*, 306 SCRA 23, April 20, 1999.

[44] Ibid., pp. 505-506.

[45] GR No. 137842, August 23, 2001, per Vitug, J., citing *People v. Nuñez*, 310 SCRA 168, July 8, 1999, and *People v. Narido*, 316 SCRA 131, October 1, 1999.

[46] Ibid.

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