

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO TIPAY Y NUITE, ACCUSED-APPELLANT.

G.R. No. 131472. March 28, 2000

Ponente: MELO, J.

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MELO, J.:

On automatic review is the decision of Branch 56 of the Regional Trial Court of the 5th Judicial Region stationed in Libmanan, Camarines Sur, the Honorable Lore R. Valencia-Bagalacsa presiding, the dispositive portion of which reads:

The Court is morally convinced that the accused ROMEO TIPAY y NUITE, is GUILTY beyond reasonable doubt of the crime of RAPE, as defined and penalized under Article 335(2)(3) of the Revised Penal Code as amended by R.A. 7659, and he is hereby sentenced to suffer the maximum penalty of DEATH. He is directed to indemnify the offended party the amount of Fifty Thousand Pesos (P50,000.00) as moral damages and Fifty Thousand Pesos (P50,000.00) as exemplary damages, and to acknowledge his offspring Marissa, with the offended party.

SO ORDERED.

(pp. 36-37, Rollo.)

The instant case was initiated by a complaint against accused-appellant Romeo Tipay y Nuite filed by Flora Deguiño [also referred to in the record as Dequiño], grandmother of victim Susan Pelaez, which reads:

That sometime February or March of 1995 at Bgy. Inandaw, Ragay, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the step-father of the private offended party, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse for several times with one Susan Pelaez y Dequiño, 15 years of age, against the latter's will, to her damage and prejudice.

(p. 12, Rollo.)

During his arraignment on April 29, 1996, accused-appellant entered a plea of not guilty. Afterwards, trial on the merits ensued, resulting in the judgement of conviction now under automatic review considering that the supreme penalty of death was imposed.

The inculpatory facts, as summarized by the Solicitor General, and based on the testimony of private complainant Susan Pelaez, her mother Marissa Deguiño-Pelaez, her grandmother Flora Deguiño, and Dr. Marilyn Cerilo-Folloso, the physician who examined the victim, are as follows:

Prosecution witness and private complainant Susan Pelaez was 17 year old at the time she testified in 1997. She was diagnosed as suffering from mild mental retardation and transient psychotic illness (p. 4, TSN, Dec. 6, 1996) and with the mental age of an eight to nine year old (Exhibit "A").

Sometime in February or March 1995, about three weeks before classes ended, Susan who was then fifteen

years old and in Grade V, and was living with her grandmother, Flora Deguino, in Barangay F. Simeon, was asked to stop schooling by her mother, Marilyn, and her live-in partner, the appellant Romeo Tipay. She was brought to the house in Barangay Inandawan where the couple lived.

One day in Barangay Inandawan, while Marilyn was out of the house and Susan's siblings were at school, her mother's live-in partner Romeo Tipay (herein appellant) poked a knife at her and made her lie down and ordered her to undress but Susan did not obey. Appellant got angry and slapped her and banged her head to the post and she lost her consciousness until her siblings arrived when Susan regained her consciousness. She noticed that her vagina was hurting (p. 67-69, April 22, 1997). Petitioner threatened Susan not to tell anybody or he would kill all of her family (p. 75, *ibid.*). Intimidated, Susan suffered in silence while appellant was emboldened and continued to abuse her.

The above incident was repeated several times whenever her mother and sibling were not around (*ibid.*, p. 67). The abuse continued in Barangay F. Simeon where Marilyn and appellant also occupied a house next to that of Flora Deguino who took care of their children who were attending school in Barangay F. Simeon. Appellant would not allow her to watch television with her siblings on the pretext that he would massage her. Instead he switched off the light, covered her mouth and undressed her and succeeded in having sexual intercourse with her (pp. 70-71, TSN, April 22, 1997). Out of fear for the life of her family, Susan kept her ordeal secret.

In October 19, 1995 when Susan was back in Barangay F. Simeon and in Grade VI in Pagod Elementary School, she was complaining to Flora Deguino of headache and spoke angrily about appellant's cruelty (p. 45, April 21, 1997). In the last week of October, Flora was summoned by a midwife Mrs. Helen Inciong, who after examining Susan informed them that Susan was pregnant (p. 46, TSN, April 21, 1997, p. 18, Dec. 2, 1997). Upon reaching home, Flora Deguino asked Susan who impregnated her. It was only then that Susan informed her grandmother that she was being raped by appellant but was too afraid to tell anyone about it (p. 47, TSN, *ibid.*). At that time Marilyn and her children were staying in F. Simeon in a house beside the house of Flora since there was no school in Inandawa.

Flora went to the police headquarters of Ragay to file a complaint against appellant (p. 48, TSN, April 21, 1997). Susan was subsequently brought to Dr. Marilyn Cerilo Follosio, officer of Municipal Health Office of Ragay, Camarines Sur, who testified that Susan had a healed hymenal-laceration at 6 o'clock and there was no menstruation due to a 4 to 5 month pregnancy (p. 38, TSN, Jan. 6, 1997). Susan gave birth to a daughter sired by appellant on October 10, 1996 (p. 78, April 22, 1997).

Appellant was arrested in October 1995 claiming that the rape complaint was a mere fabrication of Flora Deguino because she was angry at appellant for cohabiting with her daughter, Marilyn Deguino. During his testimony in court, appellant also claimed that on July 10, 1995, he saw Romeo Deguino the son of Flora raping Susan (pp. 93, 97, TSN, May 19, 1997).

(pp. 106-109, Rollo.)

Accused-appellant denied all of Susan's allegations. He argued that his mother-in-law, Flora Deguiño, was just angry at him because the latter was against his live-in relationship with Susan's mother, Marilyn; that he never subjected Susan to maltreatment which she imputed against him; and that his relationship with Marilyn's three children by her first husband was fine and they even called him "itay". As regards Susan's child, he claimed that it was sired by Mario Deguino, Marilyn's brother. He witnessed the incident when he was about to return the coconut grater to Flora's house. He saw Mario having intercourse with Susan. He informed Marilyn when he got home and the latter cried.

Atty. Edwina Romanes, the Public Assistance Office (PAO) lawyer who was assigned in Ragay, Camarines Sur, assisted accused-appellant in the circuit court and interviewed Marilyn Pelaez, her son Ariel Pelaez, and Purificacion Ipay. Said three witnesses gave statements showing that accused-appellant did not commit the crime

charged.

As mentioned above, the trial court found accused-appellant guilty beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 (2)(3) of the Revised Penal Code, as amended by Republic Act No. 7659. Its ruling reads in relevant part as follows:

In an almost inaudible voice, Susan related how Romeo Tipay, the person whom she recognized as her surrogate father, told her to undress then slapped her and banged her head when she disobeyed. She could not remember her sexual defloration, but she vividly recalled that when she came to after accused's physical assault, her vagina was painful. She was however consistent and steadfast in her declaration that her stepfather, Romeo Tipay, sexually abused her. She did not waver in her testimony despite the lengthy cross-examination. She emphatically asserted that it was the accused, not any other person who raped her and positively identified him as the person who ravished her. Her statements clearly indicate that her answers are neither rehearsed nor dictated upon by her vindictive grandmother, or even her mother. So it was held that "when a woman, more so a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed." (Pp. vs. Vitor, 245 SCRA 392 [1995]). Moreover, "a candid and straightforward narration by the victim of how she had been raped bears the earmarks of credibility (Pp. vs. Umali, 242 SCRA 17 [1995]).

There is no showing that the offended party harbored evil motives against the accused. Even if she was taught by her grandmother to point out to Romeo Tipay as her rapist, there was no way for the latter to let her memorize the details of what was done to her. Victim's answers to the questions propounded were spontaneous and categorical, lending credence to her narration. Her declarations are substantiated on material points by the testimonies of the other prosecution witnesses and the medical certificate issued by the doctor who examined the victim. Such medical evidence is an eloquent proof of the 'after the fact condition' of the coerced sexual congress. Moreover, even without the testimonies of the other witnesses for the prosecution, it is axiomatic in rape cases that the lone declaration of facts of the offended party if credible, is sufficient to sustain a conviction (Pp. vs. Rivera, 242 SCRA 26 [1995]).

(p. 32, Rollo.)

In his brief, accused-appellant argues that the trial court erred in: (1) finding him guilty beyond reasonable doubt of the crime charged; (2) not considering his testimony that it was Mario Deguiño that he saw raping Susan Pelaez; and (3) disregarding the affidavit executed by Marilyn Deguiño.

In support of the aforementioned arguments, accused-appellant reiterates that Flora Deguiño, grandmother of Susan, harbored ill-feelings against him since she vehemently objected to the live-in partnership of her daughter Marilyn and accused-appellant, and that Flora's antipathy toward him and her desire to have Marilyn break up with him was the primary motive why Flora prosecuted him. Considering Flora's moral ascendancy over Susan, accused-appellant insists that the latter was manipulated to believe that it was her stepfather who impregnated her. Further, he contends that he wanted to leave Marilyn and that was why the latter had him jailed. Initially, she executed an affidavit favoring accused-appellant and denying the latter's culpability for the crime charged. Later, however, she realized that accused-appellant wanted to leave her. She then had a change of heart, and reneged on her earlier statement, to prevent accused-appellant from leaving her. This was also the reason for Marilyn's belated act of having accused-appellant incarcerated (which was only in October, 1995) when in truth and in fact she had known about the alleged rape as early as February, 1995.

Accused-appellant also argues that Susan Pelaez's testimony creates a doubt on a very material point considering that in her testimony in court, she said that she was raped at Barangay F. Simeon, Ragay, Camarines Sur, or in her grandmother's home; whereas the criminal complaint avers that it took place at Barangay Inandawa, Ragay, Camarines Sur, particularly at her mother's house.

Accused-appellant likewise supports his denial by insisting that he saw Mario Deguiño actually rape Susan Pelaez. Consequently, the trial court gravely erred in not considering accused-appellant's testimony that he actually saw said man as the perpetrator of the crime, as well as in disregarding the affidavit of Marilyn Deguiño dated November 13, 1995, which was voluntarily executed, attesting to accused-appellant's innocence. Accused-appellant also posits that Marilyn's disclaimer was prompted by her desire to get back at him since he expressed his intentions to separate from her. Lastly, he argues that it was grave error for the trial court to convict him under a fatally defective complaint as it was Susan's grandmother who filed the same, when it should have been Marilyn, in accordance with Section, 5, Paragraph 3, Rule 110, Rules of Court.

In a long line of cases (People vs. Guamos, 241 SCRA 528 [1995]; People vs. Ramirez, 266 SCRA 336 [1997]; People vs. Abad, 268 SCRA 246 [1997]; People vs. Corea, 269 SCRA 76 [1997] People vs. Perez, 270 SCRA 526 [1997]; People vs. Casinillo, 213 SCRA 777 [1992]; People vs. Pizarro, 211 SCRA 325 [1992]; People vs. Dela Cruz, 207 SCRA 449 [1992]), the Court has laid down certain guiding principles in reviewing rape cases, to wit: (a) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove the charge; (b) considering the intrinsic nature of the crime, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution, and (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

The crux of the prosecution's evidence would then rely on the credibility of Susan Pelaez's testimony. As mentioned above, the trial court found Susan's testimony spontaneous and categorical, and not based on any ill motive. The trial court recognized the probability of her grandmother pointing out accused-appellant as her aggressor but held that this did not affect the credibility of her testimony.

It has long been held that the trial court's evaluation as to the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge, therefore, can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Thus, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected (People vs. Ramirez, supra; People vs. Gabris, 258 SCRA 663 [1996]; People vs. Vallena, 244 SCRA 685 [1995]).

This spontaneity is exhibited in the following excerpt of Susan's direct testimony:

Q:

While you were still in Grade V, do you know what unusual thing done by Romeo Tipay?

A:

There was, sir.

Q:

What did he do to you?

A:

Whenever my mother is away, I was made to take care of the children and when my brothers and sisters are no longer around, I was made to lie down, I resisted but I was threatened, by him.

Q:

You said that he threatened you, how did he threaten you?

A:

He poked a knife (witness pointed to the left side of her neck).

Q:

After poking the knife what did he do?

A:

He made me undressed.

Q:

Did you follow him?

A:

No, sir until such time when my brothers and sister arrived.

Q:

You said you did not obey what he wanted and when you did not obey him, what did Romeo Tipay do to you?

A:

He would hurt me.

Q:

How would he hurt you?

A:

He would slapped me and banged my head to the post.

Q:

What happened whenever he slapped you and banged your head to the post?

A:

I felt dizzy.

Q:

Which post are you referring to? The post of your house?

A:

Yes, sir.

Q:

Now, you said that after your head was banged to the post, aside from dizziness, what else happened to you?

A:

I don't recall anymore what happened next.

Q:

You mean you were unconscious?

A:

Yes, sir.

x x x

x x x

x x x

PROSECUTOR CONTRERAS:

Would you kindly tell us when did you recover consciousness, before or after the arrival of your brothers and sister?

A:

When my brothers and sister arrived that I recovered consciousness.

Q:

After recovering consciousness what did you observe from your self?

A:

I felt something painful.

Q:

Which one was painful?

A:

Witness pointed to her vagina.

ATTY. NACIONAL:

May we ask that it should be specified.

PROSECUTOR CONTRERAS:

What do you call that part of your body which you said was painful?

A:

My vagina "puke".

Q:

What did you observe from your vagina?

A:

It was painful.

Q:

Tell us how many times did Romeo Tipay did that to you?

ATTY. NACIONAL:

What similar act?

PROSECUTOR CONTRERAS:

How many times if you could still remember did Romeo Tipay banged your head and you lost consciousness, then after regaining consciousness you felt your vagina painful?

ATTY. NACIONAL:

Your Honor, it is a vague question, considering that this witness is mentally

PROSECUTOR CONTRERAS:

Okay, I'll reform my question. Tell us how many times did Romeo Tipay banged your head to the post?

He used to banged my head on t he post almost everyday.

Q:

Can you tell us how many times you lost consciousness everytime Romeo Tipay banged your head to the post?

A:

.I can't remember anymore because it's a long time already.

Q:

Can you tell us how many times you lost consciousness everytime Romeo Tipay banged your head to the post?

A:

I can't remember anymore because it's a long time already.

Q:

And will you also kindly tell us how many times did you observe pain in your vagina after you regain consciousness?

A:

I can't remember how many times, but many times.

Q:

Aside from banging your head in the post, what else did Romeo Tipay do to you?

A:

He slapped me.

Q:

While you were still in Grade V what other things did Romeo Tipay do to you?

A:

Whenever I asked permission to go to the movies he would not permit me.

Q:

.Why after you were not permitted to go to the movies what did Romeo Tipay do to you?

A:

"Humihilot pero iba naman ang ginagawa".

Q:

Who is "humihilot"?

A:

He would tell me that he will massage me but he does not massage me but he did other things, switch off the light.

Q:

You said he does not actually massage you but did something. What is it?

A:

He covers my mouth, so I could not shout.

Q:

After he covers my mouth, what else did he do to you?

A:

He raped me.

Q:

What do you mean by raped you?

A:

He undressed me.

Q:

After he undressed you what did he do with his penis?

ATTY. NACIONAL:

No ..

PROSECUTOR CONTRERAS:

When she said he raped me, it's possibly attributed by counsel by the terminology of the term, rape means that there was a penetration made by the accused to her.

ATTY. NACIONAL:

No, we will not admit we will cling to the fact that what is being testified to when she said he undressed me.

PROSECUTOR CONTRERAS:

After undressing?

ATTY. NACIONAL:

Well, the question was - what did you understand when you said "ginagahasa"?

PROSECUTOR CONTRERAS:

That would be now my follow up question because the term rape may not be what counsel was in mind with what this witness had in mind. Further clarification from this witness what she means when she said rape, taking into consideration her mental ability.

ATTY. NACIONAL:

She reached Grade VI.

PROSECUTOR CONTRERAS:

But she is mentally retarded, you should understand that also.

Q:

After you were undressed, what else did Romeo Tipay do to you?

A:

He covered my mouth so that I could not shout.

Q:

What else?

A:

Whenever my lola calls me he covers my mouth and tell me not to shout or else I'll be killed.

Q:

Why, why did he warned you not to shout or else he will kill you, what was he doing to you?

A:

"Ni-re-rape niya po ako". He was raping me.

(tsn, April 22, 1997, pp. 6-11)

Another significant point of consideration is the fact that Susan Pelaez, although a young woman of 17 years, was diagnosed as suffering from mild mental retardation and transient psychotic illness (tsn, December 6, 1996, p. 4) and with the mental age of an eight or nine year old child (Exhibit "A"). Her demeanor in the courtroom was described by the trial court in this wise:

Susan Pelaez, is a dark-skinned, well-built seventeen year old who washes clothes for a living. In the Courtroom she was observed to be unmindful of what is happening around her, she laughs or sleeps whenever she wanted to do so. She taps her fingers on the table or bites her fingernails even at the witness stand. However, she answered the questions in a straightforward and categorical manner, although her r's and s' were pronounced as 'y' and 't', hence, 'Mayita' and the like, but her declarations can easily be understood. She can narrate her experiences, recognize persons, and explain whatever is asked of her. She exuded the naivette and innocence of a child, despite her ordeal. She glared and made faces at the accused everytime she had the opportunity to do so.

(pp. 29-30, Rollo.)

Mental retardation refers significantly to sub-average intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior (The Sloane-Dorland Annotated Medical-Legal Dictionary, 1987 ed., p. 616). That explains the finding that despite her age (17 years), Susan had a mental age of an eight or nine year old child. Psychosis, on the other hand, refers to a serious mental disorder where the individual's behavior and thought process are so disturbed that he or she is out of touch with reality and can not cope with the demands of daily life (Atkinson, Atkinson & Hilgard, Introduction to Psychology, 1983 ed., p. 455). As diagnosed by Dr. Cuyos-Belmonte, Susan's psychosis is reactive and is considered to be mild, and thus may improve even with short term treatment. However, her mental retardation was diagnosed as a permanent organic condition and no amount of treatment can improve the same (p. 135, Record). From this diagnosis, it may be deduced that Susan is not mentally equipped for the difficult situations in life. Unfortunately, she was cruelly subjected to one of the most trying and bestial experiences which fortunately is visited on only a few.

In point is *People vs. San Juan*, (270 SCRA 693 [1997]) where the Court encountered a similar scenario. A 26-year old victim had the mental development of a 5-year old child. We held then that this fact did not lessen her credibility since the victim had shown her ability to communicate her ordeal clearly and consistently. In the same vein, the preliminary questioning during Susan's direct testimony shows that her mental retardation was not an obstacle to the disclosure of the truth, to wit:

PROSECUTOR CONTRERAS:

Susan, you were made to raise your right hand a while ago, do you know what does that mean?

A:

That I will tell the truth, sir.

Q:

Why, if you tell a lie, is that good?

A:

No, sir.

(tsn, April 22, 1997, p. 3.)

Further, it was held in *People vs. Atuel* (261 SCRA 339 [1996]), that sexual intercourse with an insane, deranged, or mentally deficient, feeble-minded, or idiotic woman is rape, pure and simple.

It can be observed from the aforequoted portion of Susan's testimony that notwithstanding her mental handicap, she is a credible witness and this handicap is not an obstacle to her perseverance in attaining justice for the bestiality that was done to her.

As aptly held in *People vs. Ramirez* (supra), citing *People vs. Dela Cruz* (251 SCRA 77 [1995]) and *People vs. Sanchez* (250 SCRA 14 [1995]), no woman especially one who is of tender age would concoct a story of defloration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished, for considering that the victim was of tender years and not exposed to the ways of the world, it is most improbable that she would impute a crime so serious as rape to any man if it were not true.

Significantly, Susan did not impute the crime just to any man, but to her surrogate father.

In response to the helpless child's cry for succor, surrogate father, accused-appellant, opted to attempt to escape

from liability by denying the charge on the basis of a concocted story.

First, he imputes the falsity of the charge on Flora Deguiño's antipathy toward him for living in with her daughter. We find such evasion flimsy. No grandmother would be so callous as to instigate her own granddaughter to report a rape and subject her to the trouble and humiliation of a public trial, if the rape never happened.

Second, accused-appellant banks on the inconsistency in Susan's testimony as regards the place of the crime. The Information states Barangay Inandawa, Ragay, Camarines Sur, whereas during Susan's direct testimony, she named two places - as follows:

Q:

While in Grade V where do you stay?

A:

I was with my lola in Pugod.

Q:

Is Pugod a barangay of Ragay?

A:

Yes, sir.

Q:

During off school days, where do you stay?

A:

At Inandawa.

Q:

While you were still in Grade V, did you stay at Inandawa?

A:

Yes, sir.

Q:

With whom?

A:

With lola.

Q:

In whose house?

A:

Our house.

Q:

When you said "our house" is it the house also of your Nanay and Romeo Tipay?

A:

Yes, sir.

Q:

Who were your companions in that house in Inandawa?

A:

My siblings.

Q:

Who were those siblings you said were your companions in that house in Inandawa?

A:

Romnick, Romelyn and Fidel.

Q:

What about Mario, Roman and Rommel?

A:

No, sir.

Q:

Why, where do they live?

A:

They are weaving sawali.

Q:

Where?

A:

At the sawali factory.

Q:

While you were still in Grade V, do you know what unusual thing done by Romeo Tipay?

A:

There was, sir.

Q:

What did he do to you?

A:

Whenever my mother is away, I was made to take care of the children and when my brothers and sisters are no longer around, I was made to lie down, I resisted but I was threatened, by him.

(tsn, April 22, 1997, pp. 5-6)

x x x

x x x

x x x

PROSECUTOR CONTRERAS:

You said that your head was banged against the post of the house. Is that house also the place where you were raped?

A:

Yes, sir. Juris

Q:

Were you raped only in that place?

A:

Anywhere, sir.

Q:

When you said anywhere, which place are you referring to?

ATTY. NACIONAL:

Your Honor, at this point in time, we will agree with the observation report that there is only one charge of rape in this case and any other rape that was committed will be immaterial.

PROSECUTOR CONTRERAS:

When you said you were raped elsewhere or anywhere did it happen on February or March 1995?

A:

Yes, sir.

Q:

After February or March 1995, were you still raped?

A:

Yes, sir.

Q:

How many times?

A:

I cannot recall anymore, sir.

Q:

Tell us in what place you were first raped?

A:

At F. Simeon, sir.

Q:

In whose house?

A:

At the house of my grandmother, sir.

Q:

But who are living in that house of your grandmother?

A:

The siblings of my mother.

Q:

Where were the siblings of your mother when you were first raped?

A:

They were at the dance hall.

Q:

Who were the only persons in the house when you were first raped?

A:

Children of Romeo Tipay.

Q:

When you said children of Romeo Tipay, whom are you referring?

A:

Romar and Romelyn.

Q:

What were Romar and Romelyn doing when you were first raped?

A:

...They were all asleep, sir.

(tsn, April 22, 1997, pp. 13-14)

An examination of Susan Pelaez's direct testimony will show that the rape referred to in the information was committed at the residence of her mother Marilyn and stepfather accused-appellant at Barangay Inandawa, Ragay, Camarines Sur. And the abuse was repeated at Barangay F. Simeon, Ragay, Camarines Sur, where Marilyn and accused-appellant later resided, next to Flora Deguiño's house. In Marilyn's affidavit presented during the preliminary examination stage of the case at bar wherein she stated: "[W]hen my daughter Susan was in Grade I to Grade IV, she stayed with her grandmother in F. Simeon, because our residence then was still in Inandawa,

Ragay, Camarines Sur. It was only in July, 1995 that we decided to move to F. Simeon. Since then, Susan stayed with us. On week-ends, however, whenever I join my husband in Inandawa, she is left either at our own house or in the house of my mother" (p. 33, Record). However, the very first time Susan was raped, it occurred at Flora Deguiño's house in F. Simeon when her uncles were all at the dance hall. Thus, when she said she was raped "anywhere," spoke the truth. Verily, it is quite unfortunate that the information failed to charge the other counts of rape.

Nevertheless, inconsistencies in the testimony of a witness with respect to minor details or inconsequential matters may be disregarded without impairing the witness' credibility (People vs. Magalang, 244 SCRA 17 [1995]) especially when these do not in actuality touch the basic aspects of the whys and wherefores of the crime (People vs. Tacapit, 242 SCRA 241 [1995]).

Third, accused-appellant attempts to shift the blame to Mario Deguiño, Susan's uncle and housemate. Accused-appellant testified that he saw Deguiño rape Susan, as follows:

Q:

Can you tell the Hon. Court if you knew who was responsible for the pregnancy and giving birth of Susan Pelaez?

A:

What I know sir is that the one responsible is Romeo Dequiño, the brother of my live-in partner.

Q:

Why do you say that he was the one responsible?

A:

When I went to the house of my mother-in law on July 10, 1995, I saw how Romeo Dequiño raped Susan.

Q:

When you saw Susan Pelaez being raped by Romeo Dequiño, what did you do?

A:

I was afraid because Romeo had a knife being poked at Susan Pelaez.

Q:

You said that it was on July 10, 1995 that Romeo Dequiño raped Susan, can you tell the Court why you went there at the house of your mother-in-law on that date?

A:

I was about to take back the coconut grater which was borrowed by my mother-in-law because we have to make something, to cook a merienda out of banana.

Q:

When you arrived there in the house of your mother-in-law on July 10, 1995, who were the persons who were in that house?

A:

I saw only Susan Pelaez and Romeo Dequiño and that was the time that Susan Dequiño was being raped by

Romeo Dequino.

Q:

How about Mrs. Flora Dequino? Where was she?

A:

I don't know, sir.

Q:

How about her husband?

A:

I don't know, sir.

Q:

You mean to say that Susan Dequino Pelaez and Romeo Dequino were alone?

A:

Yes, sir.

A:

Yes, sir.

Q:.

After you were able to get the coconut grater, what did you do?

A:

I went home and reported what I saw, what Romeo Dequino did to Susan Pelaez, to my live-in partner.

Q:

What did Marilyn do after you reported the incident to her?

A:

She cried and while she was crying, she was saying why Romeo Dequino did it to her daughter.

Q:

What other actions did you do?

A:

I was not able to do other things because Romeo Dequino's knife was poked at Susan Pelaez.

(tsn, May 19, 1997, pp. 7-8)

As correctly pointed out by the Solicitor General, accused-appellant, who was supposed to act as Susan's surrogate father, did not even report the concocted incident to the proper authorities, or even to Flora Deguiño at whose house he allegedly witnessed the rape. He testified that he told Marilyn about the incident, but that was all that he did. Such inaction is definitely contrary to logic and human experience. He failed to act as a father

naturally would upon seeing a child under his care being mercilessly ravished.

Further, Susan, who was subjected to grueling cross examination by the counsel for the defense never faltered in her story. She was the one raped. She definitely knew who attacked her and who did not. As held in *People vs. Castañeda* (252 SCRA 247 [1996]), during the rape, the complainant is close to her assailant as physically as possible, for a man and woman cannot be physically closer to each other than during a sexual act. There is thus no doubt that complainant had a good look at the physical features of accused-appellant and hence could not have been mistaken in her charge, especially when the person who ravished is one well known to her, he being her stepfather.

As regards the effect of Marilyn's retraction, we apply our ruling in *Molina vs. People* (259 SCRA 138 [1996]), where we held:

...The rule is settled that in cases where previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the application of the general rules of evidence. A testimony solemnly given in court should not be set aside and disregarded lightly, and before this can be done, both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made, carefully and keenly scrutinized, and the reasons or motives for the charge, discriminatingly analyzed.

(at p. 159)

When Marilyn Deguiño was asked on the stand why she retracted her previous testimony attesting to accused-appellant's innocence, she said:

Q:

You mentioned in the direct that you made an affidavit, you said it was not true. I am showing you again the affidavit you identified yesterday.

A:

Yes, sir.

Q:

When you executed this affidavit you were at the Prosecutor's office at Ragay, Camarines Sur with Edwina Romanes?

A:

Yes, sir.

Q:

You were there because a notice was sent to you on November 13, 1995?

A:

Yes, sir.

Q:

Who were with you when you made the affidavit on November 13, 1995?

A:

I was accompanied by Romeo Tipay and his parents.

x x x

x x x

x x x

Q:

It was Atty. Edwina Romanes who interviewed you?

A:

Yes, sir.

Q:

Before your were interviewed where you able to talk or confer with Romeo Tipay?

A:

Yes, sir. Romeo Tipay told his parents what to do.

Q:

How long have you conferred with Romeo Tipay before you were interviewed by Atty. Romanes?

A:

About 30 minutes.

Q:

How long have you stayed in the office of Atty. Romanes?

A:

It was long, I didn't remember how long.

Q:

This affidavit you identified was read to you in Bicol by Judge Ramos?

A:

Yes, sir, but I did not understand other Bicol.

Q:

It was explained to you by Atty. Edwina Romanes before you sign the affidavit?

A:

Yes, sir but I did not sign yet.

Q:.

So you signed the affidavit before Judge Ramos?

A:

Yes, sir because I was forced by the mother of Romeo Tipay because everything has to be ended already.

Q:

Did you not complain?

A:

No, sir. They were in front of me.

Q:

You did not complain to the police?

A:

Because they did not let me go.

(tsn, December 3, 1996, pp. 7-9)

We have reason to believe that Marilyn Deguiño executed her affidavit of November 13, 1995 for fear of being left by accused-appellant. She executed the same as a wife afraid of being abandoned. However, when she took the stand on December 3, 1996, she did so as a mother, with her maternal instincts prevailing over her dependence both financially and emotionally, on a man.

Lastly, we pass upon the procedural issue raised by accused-appellant, that is, the complaint having been filed by Susan's grandmother contrary to Section 5, Paragraph 3, Rule 110 of the Rules of Court.

The above-cited provision reads:

Sec. 5. Who must prosecute criminal actions. xxx

x x x x x x x x

The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be. In case the offended party dies or becomes incapacitated before she could file the complaint and has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf.

The offended party, even if she were a minor, has the right to initiate the prosecution for the above offenses, independently of her parents, grandparents or guardian, unless she is incompetent or incapable of doing so upon grounds other than her minority. Where the offended party who is a minor fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to the parents, grandparents or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the immediately preceding paragraph.

The substantive law counterpart of foregoing section is Article 344 of the Revised Penal Code which, until its amendment by Republic Act No. 8353, effective October 13, 1997 (which reclassified rape as a crime against persons and no longer a private crime, for which reason, the complaint can now be instituted by any person), read:

Art. 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness. xxx

The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above named persons, as the case may be.

X X X
X X X
X X X

The condition provided by law for the proper prosecution of the aforementioned offenses has been imposed out of consideration for the offended woman and her family who might prefer to suffer the outrage in silence rather than go through with the scandal of a public trial (*Valdepeñas vs. People*, 16 SCRA 871 [1966]). In *People vs. Estrella* (164 SCRA 114 [1988]), we held that any technical defect in a complaint for rape would be remedied by testimony showing the consent and willingness of the family of the complainant who cannot give her consent (due to minority or mental retardation, for instance), to have the private offense publicly tried. Substantially, this is what is required by the rules. Evidently, by undergoing trial, the family of complainant chose to publicly denounce the injustice committed against the latter and thus agreed to bear the personal effects of said exposure (also see *People vs. Gerones*, 193 SCRA 263 [1991]).

In the case at bar, Marilyn Deguiño, complainant's mother herself requested Susan's grandmother to take care of the case, as follows:

Q:

In fact, there was no supporting affidavit to the affidavit of your mother Flora?

A:

I asked my mother to take care of the case because I have no means to support the case.

Q:

On October 1995, you did not go to the police?

A:

He was already apprehended by the police.

Q:

So you have no knowledge that a case was filed to him in Ragay Police Station?

A:

I have knowledge, in fact I have entrusted to my mother to take care of the case because I have no mean to support the case.

Q:

What date was that?

A:

October 27, 1995.

(tsn, December 3, 1996, p. 7)

The foregoing testimony clearly exhibits the consent of the mother to publicly pursue Susan's assailant in compliance with the requirements of the law and jurisprudence.

We, however, hold that the trial court erred in imposing the death penalty on accused-appellant. Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659 (the Death Penalty Law), reads

relevantly:

x x x

x x x

x x x

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.

x x x

x x x

x x x

Pursuant to the aforecited provision, the trial court imposed the penalty of death upon accused-appellant, taking into account the minority of the victim as she is said to have been only 15 years old at the time of the rape incident, as well as the relationship of step-father and daughter between them. However, in a similar and recent case (*People vs. Javier*, G.R. No. 12696, July 26, 1999), this court pronounced:

. . . [I]t is significant to note that the prosecution failed to present the birth certificate of the complainant. Although the victim's age was not contested by the defense, proof of age of the victim is particularly necessary in this case considering that the victim's age which was then 16 years old is just two years less than the majority age of 18. In this age of modernism, there is hardly any difference between a 16-year old girl and an 18-year old one insofar as physical features and attributes are concerned. A physically developed 16-year old lass may be mistaken for an 18-year old young woman, in the same manner that a frail and young looking 18-year old lady may pass as a 16-year old minor. Thus, it is in this context that independent proof of the actual age of a rape victim becomes vital and essential so as to remove an iota of doubt that the victim is indeed under 18 years of age as to fall under the qualifying circumstances enumerated in Republic Act No. 7659.

This does not mean, however, that the presentation of the certificate of birth is at all times necessary to prove minority. The minority of a victim of tender age who may be below the age of ten is quite manifest and the court can take judicial notice thereof. The crucial years pertain to the ages of fifteen to seventeen where minority may seem to be dubitable due to one's physical appearance. In this situation, the prosecution has the burden of proving with certainty the fact that the victim was under 18 years of age when the rape was committed in order to justify the imposition of the death penalty under the above-cited provision.

The record of the case at bar is bereft of any independent evidence which would accurately show complainant's age. That complainant's was alleged in the information and/or complaint as under 16 years is not sufficient. Nor does the lack of denial on the part of accused-appellant excuse the prosecution from discharging its burden in this regard (*People vs. Javier*, *supra*).

Consequently, considering that the penalty of death cannot be imposed in the case at bar due to the aforesaid technical flaw, accused-appellant should be made to pay P50,000.00 (not P75,000.00) as indemnification for the rape committed (*People v. Betonio*, 279 SCRA 532 [1997]), the ruling in *People v. Victor* (G.R. No. 127903, July 9, 1998) being inapplicable.

The award of P50,000.00 granted by the trial court as and for moral damages is, however, sustained in accordance

with the ruling in *People vs. Prades* (G.R. No. 127569, July 30, 1998) that moral damages may additionally be awarded to the victim in rape cases, in such amount as the court deems just, without the necessity for pleading or proof as basis thereof.

Lastly, the award of P50,000.00 granted by the trial court as exemplary damages should be reduced to P25,000.00 which the Court believes is the reasonable amount to deter similar perversities, particularly the raping of one's step-daughter and consequently siring a child with her, in line with recent jurisprudence (*People vs. Sangil*, 276 SCRA 532 [1997]; *People vs. Cristobal*, 252 SCRA 507 [1996]).

WHEREFORE, the decision under review is hereby **AFFIRMED**, with the following modifications: (a) the penalty imposed is reduced to reclusion perpetua; (b) aside from the payment of Fifty Thousand Pesos (P50,000.00) as moral damages to the victim, accused-appellant is further ordered to indemnify private complainant in the amount of Fifty Thousand Pesos (P50,000.00); and (c) the exemplary damages awarded by the trial court in the amount of Fifty Thousand Pesos (P50,000.00) are reduced to Twenty-five Thousand Pesos (P25,000.00).

SO ORDERED.

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

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