PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO @ TONY EVANGELISTA Y BINAY, ACCUSED-APPELLANT.

G.R. No. 132044. October 05, 2001

Ponente: PUNO, J.

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PUNO, J.:

This is the story of another family wrecked by the insatiable lust of a man. Ten-year old JANE GARA charged her stepfather, accused ANTONIO EVANGELISTA, with rape in an Information which reads:[1]

> "That on or about the 20[th] day of April, 1996, at around 5:00 o'clock in the afternoon and prior dates thereto, at Barangay Aninuan, Municipality of Puerto Galera, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, stepfather of the offended party JANE GARA, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously lie and succeeded in having carnal knowledge of the offended party JANE GARA, a ten-year old girl, against her will.
>
> "Contrary to Art. 335 RPC in relation to R.A. 7659 (Death Penalty Law)."

JANE is the daughter of EDNA GARA EVANGELISTA by her live-in partner Jose Bayta. Edna testifed that after the death of Jose, she married accused ANTONIO EVANGELISTA on December 20, 1994.[2] After a year and four months, Edna witnessed an event that completely shattered their life.

On April 20, 1996, at about 5:00 p.m., JANE was in their house with the accused when the latter directed his two sons, Melvin and Monico, to go out of the house. The accused then wasted no time in executing his evil design. He kissed Jane on the cheeks and lips. He lowered her shorts and panty down to her knees. He kissed and fingered her sex organ. Thereafter, he inserted his penis into her vagina but failed to completely penetrate it. Jane felt intense pain but she could not shout as the accused threatened to beat her up.

It was this sordid scene that greeted Edna when she arrived from work. Unsuspectingly, Edna went to the kitchen and caught the accused naked and lying on top of Jane. Accused was forcing open Jane's thighs and was inserting his organ into hers. Jane had her blouse on but her shorts were lowered to below her knees. Jane was trying to push away the accused. When Edna saw the revolting scene, her judgment became blurred. Her first reaction was to grab a bolo and hack the accused. Luck was still on the accused's side. A bible fell off the cabinet while Edna was charging towards the accused. It distracted Edna. She momentarily stopped on her tracks to pick it up. This gave the accused a chance to jump out of the window and flee.

Edna turned to her ten-year old Jane who was in tears. She asked Jane if it was the first time that the accused molested her. Jane revealed that the accused had been sexually abusing her since January, 1996 when Edna started working. Jane kept mum about her ordeal as the accused threatened her. A flashback of memories then flooded Edna's thoughts. She recalled the admonition of her neighbor, Rosenie Anyayahan, after her marriage to the accused. Rosenie warned her to watch her husband closely as she had a bad vibration about him and he might molest Jane. Since then, she became wary of how the accused treated Jane. She recalled one particular night when she saw the accused kissing Jane. She confronted the accused but the latter rationalized that he just gave Jane a

fatherly kiss. Edna nonetheless cautioned him not to do it again.[3]

Deeply shaken by what she witnessed that day, Edna and her four kids immediately left the house. They stayed in the nearby house of her brother. Edna then contemplated on what course of action to take. On May 7, 1996, she decided to report the matter to the police authorities. She brought Jane to the Oriental Mindoro Provincial Hospital where she was examined by Dr. Maria Christina L. Gonzales. Her findings revealed healed lacerations on Jane's genitalia which admitted the smallest finger.

In August, Edna and her kids transferred to Victoria, Oriental Mindoro, as they were afraid that the sons of the accused would kill them for reporting the incident to the police.

The accused denied molesting Jane. He gave an entirely different account of what transpired that day. He testified that on said date and time, he was in the kitchen, setting up a fire in the stove as he was about to cook rice. The children were then playing in front of the house. Shortly, Edna arrived from work. He scolded her for coming home late, thus: "Galing ka na naman yata sa iyong lalaki," referring to one Martin Alfon. The statement angered Edna and an argument ensued. Their altercation ended with Edna leaving their house with her four children. Thus, the accused contended that Edna fabricated the rape charge against him so she could carry on with her illicit affair. He also declared that at the time of his testimony, Edna was already cohabiting with another man.

The accused recalled that he and Edna started their relationship in 1989. Edna was then his househelp. Before the year was over, they were cohabiting in the same house. They lived together for five years. They already had two children, Dina and Lenlen, before they decided to get married in 1994. The accused admitted that their marriage was sometimes marred by jealousy. When Edna would arrive home late from the office, he would get jealous and suspect her of carrying on an affair with Pedro and Ruben Noche. During their five-year cohabitation, the accused charged that Edna had affairs with brothers Pedro and Ruben Noche. These men would either eat with Edna or sleep in their house when he was not around. Despite her loose ways, he married Edna as he loved her and she promised to mend her ways once they were married. He also wanted to legitimize the status of his two kids with Edna.

The accused insisted that even after their marriage, Edna carried on with her illicit affair with Pedro. After his incarceration and during his testimony, Edna was already cohabiting with one Martin Alfon and was bearing his child.[4]

Two witnesses corroborated the accused's story.

MARIO CEPILLO and NICANOR LALONG-ISIP recounted that on April 20, 1996, at about 4:30 p.m., they were in the house of accused's brother, Estanislao Evangelista. Estanislao's house was about ten (10) meters away from that of the accused. They visited Estanislao to find out if the cockfight scheduled the next day would push through. They were inspecting the cocks and conversing with Estanislao when they overheard the accused and Edna having an argument. The accused was jealous and he suspected Edna of having an affair with another man. They overheard the accused exclaim in a furious tone: "Gabi ka na naman dumating. Galing ka naman sa `yong panlalalaki." Edna did not reply and immediately left the house with their children. Later on, they learned that the accused was charged with rape. Months later, they learned from the townsfolk that Edna was cohabiting with another man in Macatoc.[5]

According to Nicanor, Edna has a loose reputation in their town. She was known as having had numerous relationships with various men which was the reason for her frequent fights with the accused. Rumor had it that Edna had affairs with Pedro and Ruben Noche. She had another live-in partner in Naujan where she and her children transferred residence.[6]

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On November 12, 1997, the trial court found the accused guilty of statutory rape and sentenced him to death. The dispositive portion reads:

> "ACCORDINGLY, the court finds accused Antonio Evangelista, alias Tony, guilty beyond reasonable doubt, as principal, of the crime of rape, defined and penalized in Article 335 of the Revised Penal Code, as Amended by Section 11 of R.A. 7659 which took effect on December 31, 1993 (People vs. Martin Simon, G.R. No. 93026, dated July 29, 1994) by death when the victim is under 18 years of age and the offender is a step-parent of the victim and hereby sentences him to suffer the supreme penalty of death, together with the accessory penalties provided (for) by law, to indemnify the victim, Jane, the amount of P50,000.00 as damages without subsidiary imprisonment in case of insolvency, and to pay the costs.
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> "SO ORDERED."[7]

On automatic appeal, the appellant assigns the following errors:

> I
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> THE TRIAL COURT ERRED IN NOT CONSIDERING THE PRESENCE OF ILL MOTIVE ON THE PART OF THE ALLEGED VICTIM'S MOTHER AGAINST THE ACCUSED-APPELLANT.
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> II
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> THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY DESPITE THE INCREDIBLE AND IMPROBABLE TESTIMONIES OF THE PRINCIPAL PROSECUTION WITNESSES.
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> III
>
> GRANTING THAT THE ACCUSED IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP DESPITE FAILURE OF THE PROSECUTION TO PROVE ITS VALIDITY.

We shall discuss the first two issues jointly.

Appellant attempts to discredit the testimony of Edna, the victim's mother, by claiming that she maliciously initiated the rape charge against him so she could live with another man. This was allegedly proven by subsequent events, viz: (1) there was a delay of seventeen (17) days in the filing of the complaint; and (2) Edna admitted that she was carrying the child of her new live-in partner.

We are not persuaded. We have carefully gone over the records of this case and we are convinced of the appellant's guilt.

Edna's credibility remains unaffected by her delay in reporting the incident to the police authorities as it was sufficiently explained at the trial.[8] The delay does not detract from her credibility. Edna clarified that she had to carefully mull over her course of action against the appellant who, after all, was still her husband. She was also apprehensive about their safety due to the possible retaliation by the accused and his relatives should the crime be reported to the police authorities. Her fear was not baseless considering the proximity of the house of Edna's brother where they transferred after the incident to that of the appellant's. Moreover, Jane revealed to her that she kept mum about the numerous abuses she suffered in the hands of the appellant as the latter threatened to beat her up. Undoubtedly, these are considerations that would naturally come to the mind of a mother in cases of this nature. Thus, we find that Edna's delay of seventeen (17) days in reporting the crime was neither unreasonable nor unjustified under the circumstances.

Edna's alleged liaison with other men during her marriage to appellant was not satisfactorily established. While the appellant insisted that Edna had illicit affairs with brothers Ruben and Pedro Noche during their marriage, he offered nothing to prove his suspicion except his flimsy and unsubstantiated allegation that Pedro and Ruben would dine in his house when he was not around. Edna's admission that, at the time of her testimony, she was cohabiting with one Martin Alfon and was bearing his child does not, by itself, detract from her credibility. The records show that her affair with Martin started only after the appellant was incarcerated. In fact, right after Jane was sexually abused by the appellant in April, 1996, Edna and her kids did not go to the residence of Martin and live with him. They stayed with Edna's brother as they had nowhere else to go. Moreover, it is worthy to stress that it goes against the grain of human nature for a mother to expose the indecencies committed by her husband against her daughter if it were not to seek justice for the wrong committed against her.[9] No mother would subject her daughter to suffer the indignity of police investigation and gynecological examination, not to mention the perpetual stigma attached to the crime, were it not true.[10] In the case at bar, Edna's credibility is bolstered by the fact that her testimony corroborated in detail Jane's account of the sexual abuse that transpired that fateful day. We found no material discrepancies in their testimonies.

More than anything else, it was the credible and unfaltering testimony of ten-year old Jane that clinched the case against the appellant. Her testimony was brief, clear and straightforward. In a long line of cases, the Court has recognized that the testimony of a rape victim, especially a child victim, is accorded full weight and credit.[11] A young, innocent girl, unexposed to the ways of the world, would not publicly disclose the degrading experience of being sexually abused by another member of her family if it were not true.[12]

Neither are we persuaded that it was improbable for the appellant to have committed the alleged rape in the kitchen when there were two rooms in the house which would have concealed his lecherous attack. Time and again, we held that rape is not a respecter of place or time. There is absolutely nothing improbable with the fact that the appellant sexually abused Jane in the kitchen, which was a semi-open portion of the house. In countless cases, rape has been committed in places where people congregate - in parks, within school premises or even in the same room where other family members are sleeping.[13] In the case at bar, the appellant ensured that he was alone with Jane as he directed his sons to go out of the house. He would have succeeded in consummating his evil designs were it not for the timely arrival of Edna.

Appellant also insists that it was incredible for the sexual attack to have been consummated with Jane's underwear merely lowered to below her knees. In this position, the appellant argues that it was impossible for his penis to have touched, much less penetrated, the labia of Jane's sex organ. The appellant points out that his claim is supported by the medical finding stating that Jane's organ admitted only the smallest finger.

Appellant's theory does not hold. The prosecution established through the testimony of Edna that it would be customary for the appellant to merely lower Edna's underwear when they engage in sexual intercourse. The fact that Jane's genitalia admitted only the smallest finger does not disprove rape. To be sure, full penetration of the vagina is not necessary to consummate the rape. Mere introduction of the penis into the labia is sufficient.[14] In the case at bar, the testimonies of both Jane and Edna categorically established that the appellant was able to insert his organ into the labia of Jane's pudendum which caused Jane intense pain. The timely arrival of Edna foiled the appellant's attempt to fully insert his penis into Jane's organ. This same act was witnessed by Edna.[15] The categorical and consistent testimonies of Jane and Edna, coupled with the medical findings showing that Jane's genitalia sustained healed lacerations, proved beyond reasonable doubt that the appellant's penis touched the labia of Jane's organ and rape was consummated. As the labia is located beneath the mons pubis or the vaginal surface, if the penis touched the labia, there is already some degree of penetration beneath the surface which leads to a finding of consummated rape.[16]

While the appellant's guilt was proved beyond reasonable doubt, the trial court's imposition of the death penalty against him is unwarranted. The qualifying circumstance of relationship was not established beyond moral certainty. The Information alleged that the appellant is the stepfather of Jane. A stepfather is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring.[17] In the case at bar, the prosecution failed to prove the subsequent marriage of Edna and the appellant as their marriage contract was not adduced in evidence. Although Jane's birth certificate was presented to prove her minority and her relationship to Edna, Jane's relationship with the appellant as his stepdaughter was not established with the same degree of proof. Relationship, as a qualifying circumstance of rape, must be proved beyond reasonable doubt, just as the crime itself. The testimony of Edna and even the admission of the appellant regarding their marriage are insufficient to prove the fact.[18] The best evidence is the marriage certificate itself absent any showing that it was lost or destroyed. Accordingly, the appellant can be convicted only of simple statutory rape and the penalty of death imposed against him should be reduced to reclusion perpetua.

IN VIEW WHEREOF, the appellant ANTONIO EVANGELISTA is convicted of simple statutory rape. He is sentenced to suffer the penalty of reclusion perpetua and to indemnify Jane Gara the amount of fifty thousand pesos (P50,000.00) as moral damages, an additional sum of fifty thousand pesos (P50,000.00) as civil indemnity and twenty-five thousand pesos (P25,000.00) as exemplary damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Vitug, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Kapunan, J., on official leave.

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[1] Rollo, p. 1.

[2] September 27, 1996 TSN, Edna Evangelista, p. 26.

[3] Id., pp. 28-32.

[4] September 22, 1997 TSN, Antonio Evangelista, pp. 22-29.

[5] September 22, 1997 TSN, Mario Cepillo, pp. 3-14; May 20, 1997 TSN, Nicanor Lalong-Isip, pp. 4-5, 7.

[6] Ibid., pp. 7-10.

[7] Penned by Judge Marciano T. Virola, Regional Trial Court, Fourth Judicial Region, Branch 39, Oriental Mindoro; Original Records, pp. 111-114.

[8] People vs. Dequito, 332 SCRA 117 (2000).

[9] People vs. Aliviano, 335 SCRA 371 (2000); People vs. Yparraguire, 335 SCRA 69 (2000).

[10] People vs. Tumala, 284 SCRA 436 (1998).

[11] People vs. Diasanta, 335 SCRA 218 (2000); People vs. Fraga, 330 SCRA 669 (2000).

[12] People vs. Alicante, 334 SCRA 440 (2000); People vs. Ramos, 330 SCRA 453 (2000).

[13] People vs. Baid, 336 SCRA 656 (2000); People vs. Balacano, 336 SCRA 615 (2000); Tabanggay, 334 SCRA 575 (2000).

[14] People vs. Ulgasan, 335 SCRA 441 (2000); People vs. Castillo, 335 SCRA 100 (2000).

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[15] October 30, 1996 TSN, Jane Gara, pp. 18-20; September 27, 1996 TSN, Edna Evangelista, pp. 21-23.

[16] People vs. Campuhan, 329 SCRA 270 (2000), citing People vs. De la Peña, 233 SCRA 573 (1994).

[17] Black's Law Dictionary, 4[th] edition, p. 1584.

[18] People vs. Tabanggay, 334 SCRA 575 (2000).

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