PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELECIO HIVELA Y BANGERAN ALIAS MILING DEFENDANT-APPELLANT.

G.R. No. 132061. September 21, 1999

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PER CURIAM:

R A P E, by any measure, is an abhorrent assault upon the victim's womanhood and its bestial character becomes more pronounced when committed against one's own flesh and blood. A man ravishing his own daughter is an indubitable mark of his perverted and convulated mind; that is why life is ordained forfeit when committed under these circumstances.

Melecio Hivela y Bangeran alias Miling was meted the supreme penalty of death by the trial court which found him guilty beyond reasonable doubt of raping his 14-year old daughter Marilen Hivela. He was further sentenced to suffer the accessory penalties provided by law and to indemnify the victim P50,000.00 for the crime committed and P25,000.00 for exemplary damages, and to pay the costs.[1]

A satyr incarnate – this aptly describes accused Melecio Hivela who, instead of showering love and extending protection to his family, lecherously assaulted his own daughter Marilen and feasted on her femininity.

Evidence for the prosecution shows that on 16 May 1997, at 4 o'clock in the morning, Marilen's sleep was rudely interrupted when her father, herein accused Melecio Hivela, raised her t-shirt to breast level and stripped her of her shorts and panty; placed himself on top of her while threatening to kill her with a bolo together with her mother Elvina who was lying beside her. He inserted his penis into Marilen's vagina and made a push and pull movement. Marilen tried to free herself from the clutches of her defiler but to no avail. The cries of Marilen and Elvina and their entreaties for the accused to desist proved futile as the accused was hell bent on consummating his fiendish act. Elvina even angrily told Melecio, "that's enough, Miling," but the accused heedlessly continued until Marilen felt some fluid permeating her vagina. Some minutes later, his frenzy finally subsiding, Melecio stopped his pushing and pulling motions. But it was not to be the end of his daughter's ordeal. As if to compound the effrontery, the accused inserted a finger into his victim's organ. Marilen was certain it was her father who molested her because the house was adequately lighted with a kerosene lamp.

The offense was not meant to be contained within the confines of the Hivela household. Soon it became known in the small community. Reynaldo Villanueva, a neighbor, heard the anguished cries of Marilen. He called Merlyn de la China, another neighbor, and informed her that Melecio was raping his own daughter. Promptly, Reynaldo proceeded with Merlyn to the house of the accused. They peered through a plastic sack wall of Hivela's house and saw Melecio in the act of raping his daughter Marilen. On the witness stand, Merlyn affirmed that she saw the accused holding Marilen's two (2) hands raised from the shoulder up while he was on top of her. Melecio's brief was lowered to the knee while Marilen was naked to the chest. Reynaldo called out, "Miling, what are you doing to your daughter?" Sensing their presence, Elvina told her husband, "Melecio, you are already called by your companions." Melecio was not however to be distracted.

Reynaldo then instructed Merlyn to call the police while he would remain to watch Melecio so that he could not

escape. Merlyn willingly went to the police station and reported the matter. From the station, she accompanied the law enforcers to the house of the accused to arrest him which they did upon their arrival and took him to the police station.

On the same day, Marilen was brought to Dr. Joy Ann Jocson who conducted a medico-genital examination on the victim. Presented as prosecution witness, Dr. Jocson disclosed the following findings: (a) no pubic hair in the pubic area; (b) healed laceration in the vulvar area; (c) healed laceration on the area of the hymenal ring on the following positions – 2 o'clock, 4 o'clock, 6 o'clock, 9 o'clock and 11 o'clock; and, (d) no finding of any semen, blood or fluid inside the vaginal canal or hymen of the victim.

Dr. Jocson testified that the absence of pubic hair is consistent with the age of the victim; that the laceration on the vulvar area could have been caused by a force or pressure of something hard such as an erect penis; that at the time the victim was raped Marilen was no longer a virgin and surmised that probably she has had sexual intercourses several times before.[2] This explains the findings of healed lacerations on the vulvar area and hymenal ring of the victim.

On 20 May 1997 Marilen, accompanied by her uncle Romeo Parreño, filed a formal complaint against the accused Melecio Hivela.

Melecio, in his defense, denied having raped Marilen. He narrated that at around 4 o'clock in the morning of 16 May 1997 he left for Hinoba-an, Negros Occidental, to look for a job. He arrived in Hinoba-an at 2 o'clock in the afternoon of the same day. There, he found a job but did not know his employer's name. Working for just one week, accused went home to Bacolod City after he finished his job. All the while that he was in Hinoba-an he stayed with Roberto Espinosa, his relative. He attributed the filing of the rape charge against him to the fact that he and Romeo Parreño had a quarrel. He said that Romeo was covetous of the 3-hectare land owned by his wife Elvina. Since Elvina did not agree to give the land, a fistfight ensued between him and Romeo. Other than this, the accused did not proffer any reason which might have caused the filing of the charge against him.

We affirm the conviction of the accused. His alibi is unavailing. Alibi, being the weakest of all defenses as it is easy to fabricate and difficult to disprove, cannot prevail and is worthless in the face of positive identification of the accused.[3] When presented as first witness for the prosecution, complaining witness Marilen positively identified his father as her sexual attacker.[4] Denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.[5] The accused dismally failed to corroborate any material allegation in his testimony. He should have presented Roberto Espinosa or his supposed employer but did not do so.

Moreover, the accused, to bolster his defense, avers that the testimonies of the prosecution witnesses, especially that of Marilen Hivela, are fraught with inconsistencies. In our view, the alleged inconsistencies are more apparent than real. It is a recognized axiom in rape cases that inconsistencies in the victim's testimony do not detract from the vital fact that in truth she had been abused.[6] As a rule, a victim of rape will not come out in the open if her motive is not to seek redress and obtain justice and her testimony as to who abused her is not the truth.[7] Marilen recounted to the court the sordid details of her defilement. She candidly and unequivocally narrated how she was sexually attacked by her own father to whom she priorly reposed her trust and faith. Nor can we cast doubt on the testimony of the other disinterested witnesses who have no proven ill motive to impute this pernicious charge.

In support of his contention, the accused draws attention to the following alleged inconsistencies in the testimonies of the prosecution witnesses –

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First. When asked on cross-examination whether blood came out from her vagina when her father inserted his penis while he was on top of her,[8] she said yes. The defense now makes much of this answer and asserts that this statement contradicts the finding of the medico-legal officer that the lacerations in her vagina did not show any blood as they were already old and healed.[9]

Attention must be drawn to the fact that the complainant is unlettered, not having finished even Grade One. At fourteen (14) she was more prone to error than an adult and it was not unnatural that inconsistencies would crop up in her testimony. At one point, the prosecutor even asked permission from the trial court to be allowed to propound leading questions as he was having difficulty eliciting intelligible answers from her.[10] It may be instructive to note, and quite significantly, that never for a single moment during the trial did Marilen mention the word "blood," although she was definite that some fluid came out from her vagina when she was raped. Marilen simply answered in the affirmative when asked by the defense counsel whether blood came out from her organ. Her curt reply was simply "yes, sir" without elaborating further. Apparently, it was given without much thought. In her naivete she could have mistaken the fluid for blood. One cannot expect a rape victim to remember every ugly detail of her appalling experience, especially so since she might in fact have been trying not to remember that morbid incident in her life.[11] After all, the presence or absence of vaginal bleeding after the rape does not affect the victim's credibility.[12] What is important is that the complainant categorically testified that the accused inserted his penis into her vagina.

Second. The defense assails the credibility of Marilen for the inconsistencies in her testimony thus-

> Q: Do you have brothers and sisters?
> A: I have a sister.
>
> Q: What is the name of your sister?
> A: Nenen.
>
> Q: How old is she?
> A: Third year high school.
>
> Q: When your father raped you on May 16, 1997, was Nenen, your older sister, around or present?
> A: No, sir.
>
> Q: Where was she at that time?
> A: At Mambulao.
>
> Q: Do I get you right that you were only three at the time when the alleged rape happened?
> A: Yes, sir.[13]

Yet another prosecution witness, Merlyn de la China, testified that she saw four (4) persons in the house when the rape took place, namely, Marilen, Melecio, Elvina and Toto, son of the Hivela spouses.[14] Time and again this Court has ruled that the credibility of a rape victim is not impaired by inconsistencies in her testimony.[15] A rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[16] Marilen could have simply overlooked the presence of Toto. Nor can any doubt be cast on the credibility of eyewitness Merlyn de la China when her testimony is untainted with any contradiction or prevarication.

Third. Marilen testified that when she was assaulted the accused threatened her and Elvina, her mother, with a bolo.[17] Yet, according to the accused, nowhere in the investigation made by the police enforcers was the presence of a bolo ever mentioned; besides, how could he have threatened Marilen and his wife Elvina with a bolo when in Merlyn's testimony he was supposed to have been seen holding both hands of the victim?[18]

The argument of the accused is tenuous at the very least. The testimony of Marilen that she and her mother were threatened with the bolo dealt with the initial stage of the crime, whereas that of Merlyn was concerned with the actual sexual intercourse. Again, it would be a tall order indeed to expect a rape victim to recall the minutest details of a hellish episode in her life. The use of the bolo could have been inadvertently omitted in the narration to the police investigators by the victim. Anyway, it was not used in the infliction of any injury. Nonetheless, in a rape committed by a father against his own daughter, the father's moral and physical ascendancy substitutes for violence and intimidation.[19] Marilen, who at the age of fourteen (14) was merely at the threshold of her womanhood, could be expected to yield to the threats and intimidation of her father with less resistance by reason of his dominance over her person and her will.

Prosecution witness SPO2 Loida Geguiento revealed in her testimony that as early as February 1997 Reynaldo Villanueva and Merlyn de la China had information that accused Melecio Hivela was molesting his daughter; so they took it upon themselves to monitor his activities.[20] The accused theorizes that with the resentment of Reynaldo and Merlyn, the two (2) would jump at the first opportunity to pin him down. In this regard, the trial court observed –

> x x x Likewise, defense evidence is bereft of showing, and there is nothing on the record to show, that rebuttal witness Merlyn de la China was actuated by any improper motive. There is no reason to doubt her credibility and the veracity of her declaration. Her statement was not tainted with any contradiction, inconsistency or prevarication. We have observed her testify in a candid, categorical and consistent manner.[21]

Merlyn de la China witnessed the distressing spectacle and reported the matter instantly to the police on account of which the accused was apprehended. It is doctrinal that the evaluation by the trial court of the testimony of a witness is accorded the highest respect because it is the trial court that has the direct opportunity to observe the witness' demeanor on the stand and determine whether he is telling the truth.[22]

The defense questions the failure of the prosecution to present Elvina Parreño, mother of the victim, and Reynaldo Villanueva, an alleged direct witness, who could have enlightened the court on what really transpired during those moments of anxiety.

Suffice it to state that the lone testimony of the victim in the crime of rape, if credible, is sufficient to sustain a conviction.[23] Surely, Marilen would not concoct a story of defloration, allow the examination of her private parts and expose herself to humiliation of a public trial if she was not motivated solely by a desire to vindicate her honor.[24] Elvina on her part might have simply opted to remain neutral or stay in the background. The accused was still her husband. Cases are not uncommon when persons are rooted in inaction and vacillation when conflicting family interests are involved. After all, Romeo Parreño, uncle of Marilen, disclosed in his testimony that there was something wrong with Elvina's mind. She might have simply entrusted everything to persons whom she believed were better able to handle the matter. Nonetheless, the testimonies of the prosecution witnesses consistently showed that at the time of the rape incident Elvina was crying and even harshly rebuked the accused for what he was doing to his own daughter.

The accused also insinuates that the filing of the rape charge against him was instigated by Romeo Parreño who harbors a grudge against him. The accused now seems to be grasping at straws. As correctly explained by the trial court-

> x x x it is simply unnatural for an uncle to use his niece as an engine of malice against her own father, especially if it will subject the niece to embarrassment and stigma. Not a few accused in rape cases have attributed the charges brought against them to family feuds, resentment or revenge, but such alleged motives have never swayed the court from lending full credence to the testimony of a complainant who remained steadfast throughout her direct and cross examination, especially minors, as in this case.

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> x x x x Besides, accused and his wife have direct custody, control and moral ascendancy over Marilen so the latter cannot be easily swayed by her uncle to be used as an instrument against them by filing a trumped-up charge. Accused was caught in the act, so to speak, and the charge was filed accordingly after the arrest. Further, the victim Marilen has no motive of her own to lie and her story was corroborated by another witness who herself has no motive to falsely impute such despicable a crime as rape against the accused.[25]

All told, the defense of alibi raised by the accused cannot give him any relief. He miserably failed to establish a strong and convincing proof of his presence in Hinoba-an to preclude any suggestion that he was at the scene of the crime. Furthermore, the alleged inconsistencies he pointed out in the testimonies of the rape victim and the other prosecution witnesses tended more to bolster their credibility as these are earmarks of an unrehearsed testimony. On the other hand, the prosecution has proved beyond any scintilla of doubt that the accused was at the locus criminis and raped Marilen Hivela.

Four (four) Justices of the Court, however, continue to maintain the unconstitutionality of RA No. 7659 insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the Decision of the trial court finding the accused MELECIO HIVELA Y BANGERAN alias Miling guilty of incestuous rape under Art. 335 of the Revised Penal Code as amended by Sec. 11 of RA No. 7659 and imposing upon him the supreme penalty of DEATH and to suffer the accessory penalties provided by law is AFFIRMED with the MODIFICATION that the accused shall indemnify his daughter Marilen Hivela, the victim herein, P75,000.00 as civil indemnity,[26] P50,000.00 as moral damages,[27] P25,000.00 as exemplary damages,[28] and to pay the costs.

In accordance with Sec. 25 of the RA 7659, amending Art. 83 of the Revised Penal Code, upon the finality of this Decision, let the records of this case be forthwith forwarded to His Excellency, the President of the Philippines, for the possible exercise of his pardoning power. No pronouncement as to costs.

SO ORDERED.

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

* Also spelled M-e-l-i-n-g in the transcript of stenographic notes.

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[1] Decision penned by Judge Edgar G. Garvilles, RTC-Br. 47, Bacolod City.

[2] TSN, 4 November 1997, p. 7.

[3] People v. Quiamco, G.R. No. 96249, 19 February 1997, 268 SCRA 516.

[4] TSN, 23 October 1997, p. 3.

[5] People v. Burce, G.R. Nos. 108604-10, 7 March 1997, 269 SCRA 293.

[6] People v. Atuel, G.R. No. 106962, 3 September 1996, 261 SCRA 339.

[7] People v. Manzana, G.R. No. 94363, 17 November 1995, 250 SCRA 152.

[8] TSN, 23 October 1997, p. 10.

[9] Id., p. 5.

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[10] Ibid.

[11] People v. Butron, G.R. No. 112986 7 May 1997, 272 SCRA 352.

[12] People v. Apilo, G.R. Nos. 101213-14, 28 October 1996, 263 SCRA 582.

[13] TSN, 23 October 1997, p. 11.

[14] TSN, 13 November 1997, p. 12.

[15] People v. Sagaral, G.R. Nos. 112714-15, 7 February 1997, 267 SCRA 671.

[16] People v. Rabosa, G.R. Nos. 19362 and 120269, 9 June 1997, 273 SCRA 142.

[17] TSN, 23 October 1997, p. 12.

[18] TSN, 13 November 1997, p.12.

[19] People v. Casil, G.R. No. 10836, 13 February 1995, 241 SCRA 285, 292.

[20] TSN, 28 October 1997, p. 5.

[21] Rollo, p. 27.

[22] People v. Atuel, G.R. No. 106962, 3 September 1996, 261 SCRA 339.

[23] People v. Francisco, G.R. No. 14058, 10 July 1996, 258 SCRA 558.

[24] People v. Abordo, G.R. Nos. 80437-38, 1 July 1996, 258 SCRA 571.

[25] Rollo, pp. 27-28.

[26] People v. Victor, G.R. No. 127903, 9 July 1998; People v. Ayo, G.R. No. 123540, 30 March 1999; People v. Mengote, G.R. No. 130491, 25 March 1999; People v. Prades, G.R. No. 127569, 30 July 1998.

[27] People v. Ayo, G.R. No. 123540, 30 March 1999; People v. Mengote, G.R. No. 130491, 25 March 1999; People v. Liray, G.R. No. 101809, 20 February 1996, 253 SCRA 654.

[28] Art 2230, Civil Code of the Philippines, which provides: “In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party,” and Art. 2234 which provides: “When the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded.”

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