

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROLANDO LEONOR Y ANDANTE, APPELLANT.*G.R. No. 132124. June 08, 2004*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-132124/>**PER CURIAM:**

This is an automatic review of the Decision[1] of the Regional Trial Court of San Pedro, Laguna, Branch 31, finding appellant Rolando Leonor y Andante guilty beyond reasonable doubt of rape, sentencing him to suffer the death penalty and ordering him to pay the victim Lovely Faith Leonor the sums of P50,000.00 as civil indemnity; P50,000.00 as moral damages; and P50,000.00 as exemplary damages.

The Indictment

On July 11, 1997, an Information charging Rolando Leonor with rape was filed in the Regional Trial Court of San Pedro, Laguna, docketed as Criminal Case No. 0456-SPL. The accusatory portion of the Information reads:

That on or about February 1, 1997, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, said accused being the father of 6-year-old LOVELY FAITH LEONOR, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge with said LOVELY FAITH LEONOR.

CONTRARY TO LAW.[2]

On July 17, 1997, the appellant, duly assisted by Atty. Jose Imbang, was arraigned and pleaded not guilty to the crime charged.[3]

The Case for the Prosecution[4]

The Spouses Emily Pajo and Rolando Leonor were residents of Brgy. Langgam, San Pedro Laguna.[5] They had four children: Lovely Faith, who was born on October 25, 1990;[6] Emmanuel; April Jay; and, Jesus Jay.[7] To support themselves and their children, Rolando worked as a taxi driver,[8] while Emily worked as a beautician who rendered home service manicure in the neighborhood.[9] Emily often caught Rolando sniffing prohibited drugs.[10] Every time she confronted Rolando, he mauled her.[11] Worse, in July 1996, Rolando stopped giving financial support to his children.[12] When she could not take it any longer, Emily and her children left Rolando and moved to the house of her mother, Priscilla Pajo and the latter's husband, Romy Pabelando.[13] Rolando lived in his mother's house, which was just adjacent to Priscilla's house. Rolando often visited Emily and the children. At times he would sleep with them in Priscilla's house.[14]

At or about 1:30 p.m. on February 1, 1997, after Emily had to service a customer, Rolando went to the house of Priscilla. The latter was cooking food in the kitchen.[15] Emmanuel, who was five (5) years old, was seated on the bench in the sala with Lovely Faith. They were watching television. Rolando went near his children, unzipped his pants and pulled up ("nilisli") Lovely Faith's shorts and panties. He then inserted his penis inside her vagina. Unable to make a full penetration, Rolando withdrew his penis and inserted his middle finger inside Lovely Faith's vagina. Priscilla heard Lovely Faith crying, "Aray ko, Nanay, sinundot na naman ako ni Papa." [16] Priscilla rushed to the sala and saw Lovely Faith crying as she held her private part.[17] Priscilla also noticed that

Lovely Faith's shorts were pulled down up to her thigh, while Rolando held the front part of his pants and ran away.[18] Lovely Faith spontaneously told her grandmother that her father had sexually abused her previously, five times. She also told Priscilla that she did not tell her mother about it because her father threatened to kill her and her mother if she told anyone of the incidents.[19] Immediately, Priscilla had Rolando arrested by the Barangay Tanods.[20] She also accompanied Lovely Faith to the police station where Priscilla executed a sworn statement regarding the incident. Dr. Jaime A. Barron, Chief of the Department of Public Health and Services of San Pedro, Laguna, conducted a medico-legal examination on Lovely Faith and found a healed laceration in her hymen at 1:00 o'clock position.[21]

When Emily returned home at 5:00 p.m., Emmanuel told her, "Mama, si Ate binaboy ni Papa." [22] Emily looked for Lovely Faith, and Emmanuel told her that Priscilla brought her to town. Emily immediately went to the police station of San Pedro, Laguna, and saw Lovely Faith beside Priscilla. Lovely Faith told her story that Rolando had inserted his penis into her vagina and that when he was unable to fully penetrate her vagina, he withdrew his penis and inserted his finger instead. Lovely Faith also told her mother that Rolando had done "kababuyan" to her five times[23] but she did not say anything because her father had threatened to kill her, her mother, and grandmother, if she told anyone of his sexual assaults on her. Lovely Faith related to her mother that Rolando always used a knife to threaten her.[24]

On February 3, 1997, Lovely Faith executed a Sworn Statement identifying her father, the appellant, as the perpetrator of the crime charged.[25] A similar sworn statement was executed by Emily.[26] A complaint for rape against the appellant was, thereafter, filed by Lovely Faith, with the assistance of her mother, Emily.[27]

The Case for the Appellant[28]

Rolando denied the charge against him. He testified that on January 31, 1997,[29] he arrived at the house of Emily and opened the room of Romy Pabelando, his wife's stepfather, and found the two "on top of each other." His mother-in-law, Priscilla, was also inside the room, acting as a "bugaw" (pimp).[30] At 11:00 a.m. on February 1, 1997, he went to Priscilla's house to bring pork viand to his children. Priscilla, who was tending her store, let him in. Inside the house, some of his children were sleeping. Lovely Faith was in the sala watching over her youngest brother. He kissed Lovely Faith on the cheek and embraced her. He noticed that Lovely Faith was wearing pajamas and seemed to be sick.[31] He was later surprised that a complaint for rape was filed against him by his own daughter. He suspected that Lovely Faith was coached by her mother, grandmother and his wife's stepfather and paramour, Romy Pabelando.[32]

Lucita Leonor, the appellant's sister, testified that the appellant was a responsible father and that he supported his children through his earnings as a taxi driver.[33] Even when he and Emily separated, he brought food to his children in the house of his mother-in-law. On February 1, 1997, the appellant went to her, crying, and revealed that his wife was having an affair with her stepfather.[34] She saw Rolando in the afternoon of that day as he went to the house of his mother-in-law to bring pork viand to his children. She was later surprised that a complaint for rape was filed against him.

Ruling of the Trial Court

On November 7, 1997, the trial court promulgated a Decision finding Rolando guilty beyond reasonable doubt of raping his six-year-old daughter. The dispositive portion of the decision read:

IN VIEW OF THE FOREGOING, the Court finds that the prosecution assisted by Assistant Prosecutor Melchorito Lomarda has duly established beyond reasonable doubt the guilt of Rolando Leonor y Andante for the crime of rape defined and penalized in Article 335 of the Revised Penal Code, as amended by RA 7659. To the mind of the Court, incestuous rape is indeed repugnant and outrageous not only to a civilized but also to a barbaric society. Indeed, accused has descended himself to a level lower than a beast when he perpetuated his

lascivious design on his own flesh and blood.

WHEREFORE, the Court hereby sentences accused Rolando Leonor y Andante to suffer the penalty of death, to pay the private complainants the sums of P50,000 as civil indemnity, P50,000 as moral damages and P50,000 as exemplary damages, and to pay the costs.[35]

The trial court gave probative value to the “unshaken, unflawed and consistent”[36] testimony of Lovely Faith that she was raped by her father. The trial court disbelieved the appellant’s claim that Lovely Faith was coached by her mother, Emily, whom he allegedly caught in an uncompromising situation with her own stepfather. It also found that the appellant’s defense of denial was weak and could not prevail over the positive assertions of Lovely Faith, especially since the latter’s testimony was corroborated by the medico-legal findings of Dr. Jaime Barron.

The appellant assails the decision of the trial court contending that the crime lodged against him was a concoction of his wife and mother-in-law to cover up the illicit relationship between his wife, Emily, and her stepfather, Romy Pabelando.

The Office of the Solicitor General (OSG), for its part, asserts that the trial court correctly found that Lovely Faith, a six-year-old naive girl, lacked ill-motive to testify falsely against her own father. It also contends that the appellant’s defenses of alibi and denial are weak and cannot prevail over the positive, straightforward and sincere testimony of Lovely Faith.

However, the Office of the Solicitor General contends that the trial court erred in awarding only P50,000.00 as civil indemnity to the victim and asserts that the amount should be increased to P75,000.00.

The Court’s Ruling

The appellant’s contentions have no merit.

At the outset, we reiterate the well-constructed rule that in reviewing rape cases, the appellate court is guided by the following principles: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and, (c) evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[37] Consequently, it is the primordial duty of the prosecution to present its case with clarity and persuasion to the end that conviction becomes the only logical conclusion.[38]

The legal aphorism is that the findings of the trial court, its calibration and assessment of the testimonial evidence of the witnesses, and its conclusion based on its findings, are accorded by the appellate court high respect, if not conclusive effect.[39] This is so because the trial judge, having seen and heard the witnesses and observed their behavior and manner of testifying, is in a better position to determine their credibility.[40] An exception to this rule is when the trial court overlooked, misunderstood or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case.[41]

Rape is committed by having carnal knowledge of a woman under any of the following circumstances: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and, (3) when the woman is under twelve (12) years of age. Even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present, the gravamen of rape is carnal knowledge of a woman against her will or without her consent.[42]

After careful review of the records, we find no reason to reverse the findings of the trial court. Lovely Faith, who was only six (6) years old when the appellant ravished her, testified in a positive, spontaneous, straightforward

and consistent manner that the appellant satisfied his bestial desires, viz:

Q: On that day of February 1, 1997, did you see your father in the house of your Lola?

A: Yes, Sir

Q: Where was your Lola on that date, Lovely?

A: She was in the kitchen, Sir.

Q: What was your Lola doing in the kitchen?

A: She was cooking, Sir.

Q: When your father arrived on February 1, 1997, where were you?

A: In our long bench, Sir.

Q: Were you alone, Lovely?

A: No, Sir.

Q: Who was your companion?

A: My younger brother, Sir.

Q: Who else aside from your younger brother?

A: No more, Sir.

Q: After the arrival of your father in your house, what happened next, Lovely?

A: He removed his zipper, Sir

COURT:

Q: Zipper of what, Lovely?

A: Of his pants, Ma'am.

PROS. LOMARDA:

Q: What did your father do after he unzipped his pants?

A: "Nilislis po ang shorts ko at ipinasok po ang titi niya."

Q: Lovely, when you said "nilislis," what actually did your father do, will you please demonstrate.

A: (Witness demonstrating by pulling up her shorts.)

Q: Were you wearing panty at that time?

A: Yes, Sir.

Q: What did your father do with your panty?

A: "Nilislis din po niya."

COURT:

Q: Lovely, stand up again, how was your panty "lislis," by your father?

A: It was pulled up, Ma'am.

PROS. LOMARDA:

Q: After your father "lislis" your panty and your shorts, what did he do to you?

A: He inserted his penis ("Ipinasok po ang titi niya.")

Q: Where did your father insert his penis?

A: (Witness demonstrating by pointing to her private part.)

Q: What happened after your father inserted his penis into your private part?

A: "Dumikit lang po ang titi niya" and when he was not able to insert it, he used his finger, Sir.

Q: Lovely, you have 5 fingers, which of the 5 fingers did he use?

A: The middle finger, Sir. (Witness showing her middle finger.)

Q: How many times did your father insert his middle finger into your private part?

A: Five (5) times, Sir.

COURT:

Q: On that same occasion?

A: No, Ma'am.

Q:

You mean prior to February 1, 1997, your father had already inserted his finger into your private part for five (5) times?

A: Yes, Ma'am.

Q: In that same house?

A: No, Ma'am.

Q: Where?

A:

The first, second, third and fourth, it happened in the house of his mother, my grandmother, and the 5th was in the house of my maternal grandmother.[43]

Q: Do you love your mother?

A: Yes, Ma'am.

Q: Your grandmother, the mother of your mother?

A:

Yes, Ma'am.

Q: Your father?

A: No, Ma'am.

Q: Why? Why don't you love your father?

A: "Kasi po, binaboy niya ako."

Q: What do you mean by "binaboy?"

A: He inserted his finger into my private part, Ma'am.

Q: Are you telling us the truth, Lovely?

A: Yes, Ma'am.

Q: Do you know, Lovely, that if the court finds that your father really did that thing to you, he will be put in jail?

A: Yes, Ma'am.

Q: Do you like your father to be put to jail?

A: Yes, Ma'am.

Q: Why?

A: "Kasi po binaboy niya ako."

Q: Don't you pity your father if he will be put to jail?

A: No, Ma'am.[44]

...

Q:

When you were asked by the Honorable Judge last time, that was August 28, 1997, and the Honorable Judge asked you, "do you love your father?" and your answer is (sic) "No, Ma'am." Is that right?

A: Yes, Sir.

Q:

And in the following question by the Honorable Judge who asked you, "Why don't you love your father? And the answer you have given is (sic) that: "kasi po binaboy niya ako." Is that right?

A: Yes, Sir.

Q:

And the following question by the Presiding Judge, the question is, what do you mean by "binaboy" and your answer: "he inserted his finger on my private part, Ma'am," is that right?

A: Yes, Sir.

Q:

I ask you now, by your testimony when you said "binaboy ka," what your father did to you is that he inserted his finger on your private part and nothing more, nothing less?

A: No, Sir. ("Hindi po.")

Q: What do you mean by "hindi po?"

A: He also inserted his penis, Sir.

COURT:

Q: Where did he insert his penis?

A: Into my vagina, Ma'am.

ATTY. ALVAREZ:

Q:

And you also stated, if I remember right that when he "lislis" your short, he inserted his penis inside your shorts?

PROS. LOMARDA:

A: No, he inserted his penis not in her short, it is in her private part.

ATTY. ALVAREZ:

I withdraw that.

Q: Did your father try to insert his private part on your private part or in your shorts?

A: He inserted his private part into my private part, Sir.

Q: Were you wearing panty at that time?

A: Yes, Sir.

Q: And your father did not remove your panty?

A: He also "lislis" my panty, Sir.

COURT:

Q: And because of what your father did to you, are you mad at him?

A: Yes, Ma'am.

ATTY. ALVAREZ:

Q:

When you were asked last time what happened after your father inserted his penis into your private part, your answer is (sic) that "dumikit lang po," is that right?

A: Yes, Sir

Q: I ask you, how many times did your father inserted his finger on your private part?

A: Five (5) times, Sir.

Q: Was that on one single occasion?

A: No, Sir.

Q: Do you remember if you could the month and the date your father did those 5 times that he inserted his finger into your private part?

A: No more, Sir.

COURT:

Q:

Did you not tell your mother or your Lola about the act of your father in inserting his finger on your private part, did you not tell them?

A: No, Ma'am.

Q: Why?

A:

Because he was poking a knife at me and he told me that if I will report to my mother, he will kill my mother and my grandmother, Ma'am.[45]

The defense foisted by the appellant on the Court, that Lovely Faith was coached by her mother to conceal the latter's alleged illicit relationship with her stepfather, has been unsubstantiated. Motives such as feuds, resentment or revenge have never swayed us from giving full credence to the testimony of a minor complainant.[46]

In a litany of cases, this Court has ruled that the testimonies of child-victims of rape are to be given full weight and credence. Reason and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape, if what she claims is not true. The testimony of Lovely Faith is replete with details such that she could not have testified the way she did even if she was coached.[47]

Lovely Faith was so devastated by the sexual assaults by her own father that when asked in open Court if she wanted to go near her father and embrace and kiss him, she obstinately refused:

Q: Where is Lovely Faith? You want to go near your father? You want to kiss your father?

PROS. LOMARDA:

We would like to make it of record that each time the Honorable Court asks question do you want to kiss your father, the child just simply shakes her head.

COURT: (to Lovely Faith)

Lovely Faith, you answer to (sic) the question of the court.

Q: Do you want to go near your father?

A: "Ayoko po." (I don't want.)

Q: Do you want to kiss your father?

A: "Ayoko po."

Q: Do you want to embrace your father?

A: "Ayoko po."

Q: Do you want to talk to your father?

A: "Ayoko po." [48]

Lovely Faith's testimony was even corroborated by the findings of Dr. Jaime Barron that he found a laceration in her hymen at 1:00 o'clock position when he examined her. We have ruled that when the victim's testimony is corroborated by the physician's findings of penetration, as when the hymen is no longer intact, then there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[49] Mere touching by the male's organ of the labia of the pudendum of the female's private part is sufficient to consummate rape.[50]

The trial court was correct in brushing aside appellant's denial and alibi. As a rule, these defenses are negative and self-serving and are always received with caution – not only because they are inherently weak and unreliable, but also because they are easy to fabricate. Lack of defense cannot prevail over and are worthless in the face of the positive and categorical statements of the victim.[51] To be believed, these weak defenses must be buttressed by strong evidence of innocence, otherwise, they are considered self-serving and of no evidentiary value.[52] The appellant's convoluted testimony on the illicit affair between his wife and the latter's stepfather has not been corroborated.

The Crime Committed by the Appellant

The trial court correctly ruled that the appellant is guilty of qualified rape under Article 335 of the Revised Penal Code, as amended by Republic Act 7659, viz:

ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be, likewise, death.

When by reason or on occasion of the rape, a homicide is committed, the penalty is death.

The death penalty shall also be imposed if the crime is committed with any of the following attendant circumstances:

- 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.

...

The concurrence of the victim's minority and her relationship to the accused must be both alleged and proven beyond reasonable doubt.[53] In the present case, the Information alleges that the victim was six (6) years old at the time of the commission of the crime and that the perpetrator is her father. The prosecution adduced in evidence a certified true copy of Lovely Faith's birth certificate showing that she was born on October 25, 1990

and that her father is the appellant. She was just a little over six (6) years of age on February 1, 1997, when she was raped by the appellant. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.[54] It is also a prima facie evidence of filiation.[55]

Thus, the prosecution was able to prove beyond reasonable doubt the victim's minority and her relationship to the appellant. As such, the trial court correctly imposed the death penalty.

The Civil Liabilities of the Appellant

The trial court correctly awarded moral and exemplary damages to the victim, Lovely Faith Leonor. However, the award of moral damages should be increased to P75,000.00, conformably to current jurisprudence,[56] while the award of exemplary damages should be reduced to P25,000.00.[57]

Three Justices of the Court maintain their position that Republic Act No. 7659 is unconstitutional insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority that the law is constitutional, and that the death penalty can be lawfully imposed in the case at bar.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of San Pedro, Laguna, Branch 31, convicting the appellant Rolando Leonor y Andante of qualified rape under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and sentencing him to suffer the death penalty is AFFIRMED, with the MODIFICATION that the award for civil indemnity is increased to Seventy-Five Thousand Pesos (P75,000.00), and the award for exemplary damages is reduced to Twenty-Five Thousand Pesos (P25,000.00). No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

[1] Penned by Judge Stella Cabuco Andres.

[2] Records, p. 1.

[3] Id. at 56.

[4] The prosecution presented the following witnesses: Emily Pajo Leonor, Priscilla Pajo, Lovely Faith Leonor and Dr. Jaime A. Barron.

[5] Exhibit "B," Records, p. 110.

[6] Exhibit "C," Id. at 111.

[7] TSN, 6 August 1997, pp. 5-6. At the time Emily Pajo Leonor testified, Lovely Faith was six (6) years old; Emmanuel was five (5) years old, April Jay was three (3) years old and Jesus Jay was eight months old.

[8] TSN, 14 August 1997, p. 8.

[9] TSN, 6 August 1997, p. 6.

[10] TSN, 22 August 1997, p. 3.

[11] TSN, 14 August 1997, p. 13; Exhibits "C-1" to "C-2," Records, pp. 112-113.

[12] Id. at 5.

- [13] Id. at 9.
- [14] Id. at 11.
- [15] TSN, 22 August 1997, p. 7.
- [16] Id. at 8.
- [17] Id. at 12.
- [18] Id. at 12-13.
- [19] Id. at 18.
- [20] Id. at 16.
- [21] Exhibit “E;” Records, p. 115.
- [22] TSN, 6 August 1997, p. 7.
- [23] Id. at 10.
- [24] TSN, 6 August 1997, p. 9.
- [25] Records, p. 18.
- [26] Exhibit “F,” Records, p. 15.
- [27] Exhibit “A,” Id. at 12.
- [28] The defense presented the following witnesses: Isidro Blacer, Rolando Leonor and Lucita Leonor.
- [29] TSN, 10 October 1997, p. 2.
- [30] TSN, 8 October 1997, p. 8.
- [31] Id. at 18-19.
- [32] Id. at 10.
- [33] TSN, 10 October 1997, p. 5.
- [34] Id. at 11.
- [35] Records, pp. 151-152.
- [36] Id. at 151.
- [37] People of the Philippines vs. Joselito Pascua, G.R. No. 15185, November 27, 2003,
- [38] People of the Philippines vs. Bobby Sanchez, G.R. No. 135563, September 18, 2003.
- [39] People of the Philippines vs. Exequiel Mahinay, G.R. No. 139609, November 24, 2003.
- [40] People of the Philippines vs. Benjamin Lopez, G.R. No. 149808, November 27, 2003.
- [41] People of the Philippines vs. Exequiel Mahinay, *supra*.
- [42] People of the Philippines vs. Teofilo Madronio, G.R. Nos. 137587 and 138329, July 29, 2003.
- [43] TSN, August 28, 1997, pp. 7-10.

[44] Id. at 10-11.

[45] TSN, 5 September 1997, pp. 4-7.

[46] People of the Philippines vs. Martin Alejo, G.R. No. 149370, September 23, 2003.

[47] People of the Philippines vs. Felix Montes, G.R. No. 148743-45, November 18, 2003.

[48] TSN, 8 October 1997, pp. 27-28.

[49] People of the Philippines vs. Felix Montes, *supra*.

[50] People of the Philippines vs. Dionisio Rote, G.R. No. 146188, December 11, 2003.

[51] People of the Philippines vs. Felix Montes, *supra*.

[52] People of the Philippines vs. Ernesto Alvarez, G.R. Nos. 140388-91, November 11, 2003.

[53] People of the Philippines vs. Martin Alejo, *supra*.

[54] *Ibid*.

[55] Heirs of Pedro Cabais vs. Court of Appeals, 316 SCRA 338 (1999).

[56] People vs. Antonio Mendoza, G.R. No. 15289 and 152758, October 24, 2003.

[57] People vs. Degamo, 402 SCRA 133 (2003).

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