

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WILLIAM ALPE Y CUATRO, APPELLANT.

*G.R. No. 132133. November 29, 2001*

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### PER CURIAM:

This is an automatic review of the December 8, 1997 judgment rendered by the Regional Trial Court of Naga City, Branch 28, in Criminal Case No. RTC'95-6000 convicting WILLIAM ALPE y CUATRO of qualified rape of his daughter, Mary Joy Alpe. The decretal portion of said Decision reads as follows:

"WHEREFORE, in view of all the foregoing findings that the prosecution was able to prove the guilt of accused William Alpe beyond reasonable doubt of the crime of rape, judgment is hereby rendered whereby said accused is sentenced to suffer the penalty of death and to pay the private complainant moral damages in the amount of FIFTY THOUSAND (P50,000.00) PESOS. With costs against the accused." [1]

The accusatory Information [2] against appellant reads as follows:

"That sometime in the month of January, 1995, in the Municipality of Gainza, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of his daughter Mary Joy Alpe y San Juan, then 14 years of age, against her will."

When arraigned on July 8, 1997, appellant, with the assistance of counsel pleaded "not guilty." [3] In due course, appellant was tried and found guilty of qualified rape.

The Solicitor General summarized the evidence for the prosecution thusly: [4]

"Appellant William Alpe and his wife, Virginia Alpe, and their four (4) children, namely, private complainant Mary Joy, the eldest, who was 14 years old at that time, and her younger siblings, Michael, Lorena and William, Jr., reside at their one-room affair house at Barangay Namuat, Gainza, Camarines Sur.

"Sometime in January 1995, around 3:00 o'clock in the morning, the Alpes were asleep at their house, with the spouses on one mat, and their four (4) children on another mat.

"Suddenly, private complainant Mary Joy was awakened when she felt that appellant was beside her, removing her clothes, and caressing her breast and private parts. Appellant, who was only wearing a T-shirt and was naked from the waist down, then placed himself on top of her and inserted his penis into her vagina, and did a push and pull movement. She experienced extreme pain and described that it felt like she was dying when he inserted his penis into her sexual organ. She tried to extricate herself from appellant but she failed. Appellant warned her not to tell anybody, not even her mother, otherwise he would kill her and the other members of the family. She managed to call her mother who was just about an arm length away and shouted 'mother, my father is beside me.' Mary Joy's shout jolted her mother, Virginia, from her sleep. The latter rose up slowly as her knees trembled upon seeing that her husband was lying on top of their daughter, Mary Joy. She clearly saw them as the room was illuminated by the small lamp that was kept lighted throughout the night. Then she pulled appellant away from Mary Joy. Upon doing that, appellant pushed her towards the floor causing her to land on her back. Then appellant got hold of a piece of wood and struck her with it, twice. Then they

[quarreled] and argued with each other. When she asked appellant if he had been sexually abusing their daughter, he replied that he was only showing affection. When she asked Mary Joy if her father had previously abused her, she did not reply but just went on crying. Her younger siblings, who were frightened by what they saw, also cried.

"It was on April 29, 1995 that Mary Joy revealed to her mother that appellant had previously raped her on three (3) other occasions, once in the month of May, 1993, and twice in the month of June, 1993, all at the time when her mother was in Biñan. Before she made the revelation, two (2) days before or on April 27, 1995, appellant had mauled her mother, which incident was the subject of another criminal case against appellant for which he had already been convicted. Mary Joy explained that the reason she did not immediately report those rape incidents to anybody, not even to her mother, was because she was afraid of appellant's threat that he would kill her and the other members of the family. She, however, later felt impelled to make the revelation because aside from the fact that she could no longer stand appellant's too frequent physical assault on her mother, she too could no longer bear appellant's sexual abuses, and she became afraid that he would also sexually abuse her younger sister, Lorena.

"Because of what Mary Joy revealed to her, Virginia Alpe decided to accompany her daughter to the police station and filed several complaints for rape against appellant. The other rape incidents which took place in 1993 became the subject of other rape cases against appellant, in addition to the one at bar. Consequently, Virginia and her four (4) children transferred residence to Barangay Cagbunga, Gainza, Camarines Sur.

"Upon the suggestion of the police authorities, Mary Joy was subjected to physical and internal examination by Dr. Elizabeth Fernandez on May 1, 1995.

"The following are the pertinent results of the examination by Dr. Fernandez:

Physical Findings: Internal Examination admits easily 1 finger, presence of a healed hymenal laceration at 9:00 o'clock.

The above described injury is found in the body of the subject, the age of which is compatible [with] the alleged date of infl[i]ction.

"Dr. Fernandez testified that just because only one laceration was found does not necessarily mean that there was only one infliction because the extent of the laceration depends much on the elasticity of the hymen. She further cited that there are even some cases wherein despite having delivered a baby, the hymen of a woman had remained intact, indicating that it was because of the extremely elastic nature of the hymen of that particular woman." (Citations omitted)

On the other hand, appellant merely "denied having raped her daughter MARY JOY ALPE, and stated that had he raped her, she `would have suffered multiple laceration because there are bolitas embedded in my organ. x x x implanted one on one side of my organ and the other one is under my penis so that if it will be used in sexual intercourse that bolitas would cause damage to the female organ.'"[5]

The court a quo disregarded appellant's denial and contentions. Instead, it gave full credence to the testimonies of both Virginia Alpe and Mary Joy Alpe that appellant had carnal knowledge of the latter, against her will one early morning in January 1995.

The court a quo also found that, as evidenced by her birth certificate, Mary Joy was just 14 years old when the accused raped her.

In his Appellant's Brief,[6]appellant faults the court a quo with the following alleged errors:

"I

"The court a quo erred in finding the accused-appellant guilty beyond reasonable doubt of the crime of rape.

"II

"The court a quo erred in ordering the accused-appellant to pay private complainant moral damages in the amount of P50,000.00"

More specifically, appellant contends that the delay in reporting the alleged rape and the presence of bolitas in his penis in conjunction with the proof of only a single laceration in Mary Joy's hymen create reasonable doubt about his guilt.

We are not persuaded. Well-settled is the rule that delay in reporting the offense of incestuous rape is not an indication that the charge is fabricated. Neither does it cast doubt on the credibility of the complainant, as it is not uncommon for young girls to conceal for sometime the assault on their virtue because of the rapist's threat on their lives.[7] In this case, appellant consistently intimidated Mary Joy by threatening to kill her and the other members of the family if she revealed the rape committed against her. She satisfactorily explained[8] that she did not immediately report the rape incidents, because she was afraid of the threats made by appellant. "Delay in reporting a rape incident neither diminishes complainant's credibility nor undermines the charges of rape where the delay can be attributed to the pattern of fear instilled by the threats of bodily harm, specially by one who exercised moral ascendancy over the victim." [9]

The existence of bolitas in appellant's penis also fails to raise any reasonable doubt that he raped Mary Joy. Appellant opines that the presence of bolitas in a man's penis will result in multiple lacerations in a virgin's hymen. Other than his opinion, there is, however, no evidence proving its truth. Significantly, he has not been shown to be in possession of special knowledge or experience on the subject matter.[10] Hence, his opinion on the number of lacerations a penis with bolitas would cause has no probative value. Thus, his claim that he could not have had carnal knowledge of Mary Joy, since she had only one hymenal laceration, cannot be given weight.

On the other hand, the claim of Mary Joy that appellant had carnal knowledge of her against her will is supported not only by her clear and convincing testimony but also by that of her mother. After carefully going over the records of this case, we find no cogent reason to disturb the finding of the trial court upholding the credibility of both.

Virginia Alpe testified:

"A

It was one night while our family was sleeping when I heard Mary Joy shouting, maam.

Q

What was she shouting?

A

She shouted 'Mother, my father is beside me', maam.

Q

When did this happen?

A

Last January, 1995, maam.

Q

Where?

A

In Barangay Namuat, maam.

Q

More or less what time?

A

Around 3:00 o'clock in the early morning, maam.

Q

So when you heard your daughter shouting, what did you do?

A

After I was awakened I was surprised with what I saw because I saw William Alpe lying on top of our daughter Mary Joy Alpe, maam.

Q

And what was William Alpe doing on top of Mary Joy Alpe?

A

He was having a sex with our daughter, maam.

PROS. TURIANO:

May we put on record that the witness is now crying. May we further state that as per the testimony of the witness, the accused is doing a push and pull movement and saying I saw him making a push and pull movement on top of our daughter.

Q

What was your daughter doing when you saw them?

A

She was resisting her father and she was crying and fleeing to her father, maam.

Q

What were they wearing, if any, when you saw them?

A

The two (2) of them were naked, maam.

Q

And so when you saw them how far where you from them?

A

Around one (1) arm length, maam.

Q

And what enable you to see them?

A

I saw them because we have no room in the house, maam.

Q

Can you tell this Honorable Court whether or not there was an illumination at that time?

ATTY. OCAMPO:

Objection Your Honor, leading.

PROS. TURIANO:

Whether or not Your Honor please is not leading.

COURT:

Yes, its a choice in other words, alright question from the court.

Q

How were you able to see them when it was 3:00 o'clock in the morning?

A

We have a small lamp that was lighted throughout the night, sir."[11]

On the other hand, Mary Joy testified as follows:

"PROS. TURIANO:

Q

So we bring you now to the incident that took place in January 1995. What time did it happen?

A

3:00 o'clock in the early morning, sir.

Q

Do you recall the exact date in January when this incident took place?

A

I cannot remember the date, maam.

Q

Can you tell us how it happened?

A

Yes, maam.

Q

How did it happen?

A

We were sleeping at that time, maam.

COURT:

Q

What time did you sleep that night?

A

About 10:00 o'clock in the evening, sir.

Q

You mentioned about we, who were with you at that time you were sleeping?

A

My mother, my two (2) brothers and my other sister sir and I.

COURT:

Proceed.

PROS. TURIANO:

Q

How about the accused where was he at that time you were sleeping?

A

He was beside my mother, maam.

Q

Can you tell this Honorable Court whether or not you sleep in the same room?

A

We have no room in our house, maam. My father and my mother sleep on the same mat while I and my brothers and sister were sleeping on another mat.

Q

And so what happened?

COURT:

Before that,

Q

Does the court understand from you that you can just see in one room?

A

Yes, sir.

COURT:

All right, proceed.

PROS. TURIANO:

Q

And so what happened?

A

While I was then sleeping I was awakened when the accused was already beside me and caressing my breast and my private part.

Q

How did you know that it was the accused who was caressing you?

A

I was awakened, maam.

Q

Can you tell this Honorable Court whether or not you saw him?

A

Yes, maam I saw Him.

COURT:

Q

How were you able to see him when according to you it happened at 3:00 o'clock in the morning?

A

We have a lamp inside our house that is lighted sir.

COURT:

Proceed.

PROS. TURIANO:

Q

What else did the accused do if any?

A

He placed himself on top of me and inserted his penis into my vagina and I kept shouting to my mother telling her that my father is on top of me.

PROS. TURIANO:

For the record, may we manifest that the private complainant is crying.

COURT:

Alright, proceed.

PROS. TURIANO:

Q

What did the accused do on top of you?

A

He kept on pushing and pulling his penis into my vagina, maam.

Q

And how long did he stay on top of you?

A

Several minutes only maam.

Q

And then what did you do when he was doing this?

A

I tried to extricate myself and at the same time I shouted to my mother, maam.

Q

What did you feel when he was doing this to you?

A

When he placed his penis into my vagina I felt I am dying because of pain, maam.

Q

What happened after that?

COURT:

Before that,

Q

When you noticed that your father placed himself on top of you, do you remember whether he was wearing anything?

A

He was naked all over, sir.

Q

You mean completely naked?

A

He was wearing T-shirt but he has no more underwear, sir.

Q

How about you?

A

When he came beside me he removed my clothes that is why I was awakened, sir.

Q

Were you awakened already when he was removing your clothes or you were awakened when he was just beside you?

A

I was awakened when he was already removing my clothes, sir.

COURT:

Alright, proceed from there.

PROS. TURIANO:

Q

Can you tell this Honorable Court whether or not the accused said anything while he was doing this to you?

A

He told me not to report this matter to anybody even to my mother because if I do that he would kill us, maam.

Q

Now, what happened after that?

A

When my mother was awakened [s]he pulled my father away from me, maam.

Q

And what happened next?

A

And then my mother kept on asking my father if he was always doing that to me, maam.

Q

And what did your father say?

A

My father told my mother that he was only showing me his affection, maam.

Q

And after that what happened next?

A

After that my mother and my father had a quarrel, maam.

Q

What happened during the quarrel?

xxx xxx xxx

A

During the quarrel my father pushed my mother down to the floor, maam and my father got a piece of wood and struck my mother.

Q

Do you know how many times your father struck your mother with that piece of wood?

A

Several times, maam.[12]

The above narration erases all reasonable doubt that appellant raped Mary Joy.

Article 335 of the Revised Penal Code, as amended by RA 7659, which is the governing law in this case, states that the death penalty shall be imposed if the crime of rape is attended by any of the following circumstances:

"When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim;"

In this case, the Information properly alleges that appellant is the father of the victim, Mary Joy Alpe, and that the latter was only 14 years old when the rape was committed. To prove these allegations, the prosecution offered in evidence the Birth Certificate[13] issued by the Civil Registrar of Naga City stating Mary Joy's date of birth as August 19, 1980 and the name of her father as "Alpe, William C." It also offered the testimony of Virginia Alpe, who stated that she is Mary Joy's mother, that Mary Joy was around fifteen when the incident in question happened, and that appellant is her husband and Mary Joy's father. Clearly, the prosecution proved beyond reasonable doubt the circumstances of minority and relationship.

Four members of the Court maintain their position that RA 7659, insofar as it prescribes the death penalty, is unconstitutional; however, they submit to the ruling of the Court, by majority vote, that the law is constitutional and the death penalty should accordingly be imposed.

Anent the issue of damages, the trial court correctly awarded P50,000 as moral damages. As explained in *People v. Catubig*,[14] such award "rests on the jural foundation that the crime of rape necessarily brings with it shame, mental anguish, besmirched reputation, moral shock and social humiliation to the offended party." In addition, P75,000 as civil indemnity ex delicto and exemplary damages in the amount of P25,000 are also awarded to the offended party, consistent with prevailing jurisprudence.

WHEREFORE, the decision of the Regional Trial Court of Naga City Branch 28, in Criminal Case No. RTC'95-6000 finding appellant William Alpe y Cuatro guilty of the crime of qualified rape and sentencing him to suffer the penalty of death and to pay the costs, is **AFFIRMED** with the **MODIFICATION** that appellant shall pay Mary Joy Alpe in the amount of P75,000 as civil indemnity ex delicto and P25,000 as exemplary damages, in addition to the P50,000 moral damages awarded by the trial court.

In accordance with Section 25 of Republic Act No. 7659, amending Section 83 of the Revised Penal Code, upon

finality of this Decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of pardoning power.

**SO ORDERED.**

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

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[1] Assailed Decision, p. 10; Rollo, p. 26; records, p. 82.

[2] Records, p. 1.

[3]

[4] Appellee's Brief, pp. 4-8; Rollo, pp. 73-77.

[5] Appellant's Brief, p. 3; Rollo, p. 47.

[6] p. 1; Rollo, p. 45.

[7] *People vs. Pamor*, 237 SCRA 462, 177 (1994); *People vs. Montefalcon*, 305 SCRA 169 (1999).

[8] October 3, 1997 TSN, p. 20.

[9] *People vs. Padil*, 318 SCRA 795, 807 (1999).

[10] Sec. 49, Rule 130, Rules of Court.

[11] September 29, 1997 TSN, pp. 24-26.

[12] October 3, 1997 TSN, pp. 13-18.

[13] Exhibit B.

[14] GR No. 137842, August 23, 2001.

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