

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ENRIQUE LABAYNE Y AGUILAR, ACCUSED-APPELLANT.

G.R. No. 132170. April 20, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an automatic review from the decision rendered by Branch 76 of the Regional Trial Court of San Mateo, Rizal, finding the accused-appellant, Enrique Labayne y Aguilar, guilty beyond reasonable doubt of the crime of Rape and nine (9) counts of Acts of Lasciviousness. The dispositive portion of said decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in these cases as follows:

1. Finding herein accused Enrique Labayne y Aguilar GUILTY beyond reasonable doubt of the crime of Rape as defined in and penalized under Article 3354 of the Revised Penal Code, as amended, and sentencing him to the penalty of death, to indemnify complainant Mary Rose S. Daligdig in the amount of P50,000.00 as moral damages, and to pay costs.

2 Finding herein accused Enrique Labayne y Aguilar GUILTY beyond reasonable doubt of nine (9) counts of Acts of Lasciviousness as defined in and penalized under Article 336 of the Revised Penal Code, and sentencing him to suffer six (6) years imprisonment for each count, to indemnify complainant Mary Rose S. Daligdig in the amount of P20,000.00 for each count, as moral damages, and to pay costs.

SO ORDERED.[1]

The records reveal that on December 2, 1996, complainant Mary Rose Daligdig, nine (9) years of age, assisted by her mother Angelina Daligdig, filed a criminal complaint for Rape against the accused. Subsequently, the public prosecutor filed the following information:

That on or about the 24th day of November, 1996 in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with MARY ROSE DALIGDIG Y SABINO, a nine (9) years old girl, against her will and consent."[2]

When arraigned on February 7, 1997, appellant, with the assistance of counsel, pleaded "Not Guilty" to the aforesaid charge.

Thereafter, nine (9) counts of Acts of Lasciviousness were also filed by the same complainant against herein appellant. Nine (9) separate informations were subsequently filed. The information, dated 3 February 1997 in Criminal Case No. 3136-97-SM reads as follows:

That on or about the 8th day of October 1996, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force, coercion and intimidation, with the use of a knife and with lewd design and intent to cause or gratify his sexual desire,

abused, humiliated and degraded complainant MARY ROSE DALIGDIG Y SABINO, a nine (9) year old girl, having moral ascendancy over her being her acknowledged step-father (sic), did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon said complainant his acknowledged stepdaughter by then and there ordering her to hold and suck his penis which she did, and at the same time said accused kissed her lips, neck and vagina, against her will and consent.[3]

The other eight (8) informations for acts of lasciviousness are virtual reproductions of the above-quoted information; they only differ as to the dates of the alleged acts of lasciviousness. These cases were consolidated with the rape case.

When arraigned on March 12, 1997, Enrique Labayne entered a plea of "Not Guilty" to all nine (9) counts of Acts of Lasciviousness. Joint trial on the merits ensued henceforth.

Four witnesses testified for the prosecution.

The first was the victim Mary Rose Daligdig. She testified that she was born on May 27, 1987 to Angelina V. Sabino and Arthur A. Daligdig.[4] Mary Rose used to live with her grandparents until she was six (6) years of age when she moved in with her mother and her stepfather, herein appellant, at No. 66 B. Mariano St., Sta. Ana, San Mateo, Rizal.[5] After the alleged raped occurred, she transferred back to her grandmother's house at Sta. Rosa, Laguna.

According to Mary Rose, the first incident took place on October 4, 1996 at around 3:00 in the afternoon. She was taking her nap in the bedroom of their home in San Mateo, Rizal when appellant Enrique Labayne woke her up. Her mother was not at home. He told her to go to the door of the kitchen. She asked him why but he did not respond. She first went to the bathroom and then proceeded to the kitchen where she saw the appellant holding a knife. He told her not to make any noise or else he would kill her, thus: "tutuluyan daw po niya ako." [6] He then held the knife at her right neck and told her to remove his shorts and brief, suck his penis, and to move her hand back and forth as if in the act of masturbation. After ejaculating appellant kissed her on the lips, neck and vagina. She cried and when the sexual advances ended, she proceeded back to the place where she was sleeping. She then encircled the date on the calendar but did not tell her mother about that incident. She was afraid the accused would carry out his threats to kill her.

A few days later, in the afternoon of October 8, 1996, the appellant again woke up Mary Rose. The same sexual abuse happened in the same place and in the same manner with appellant again repeating his threats of death. Afterwards, she was told to go back to the place where she was sleeping. Mary Rose encircled the date on the calendar again, so that "if my mother will find out what happened I will be able to say the date." [7] According to Mary Rose the sexual abuse was repeated on the following dates: October 14, 16, 19, November 4, 9, and 13. After each incident, she would encircle the date on her calendar.[8]

On November 24, 1996 at about 2:00 in the afternoon, the accused again woke up Mary Rose Daligdig. He told her to go to the door of the kitchen and held a knife to her neck in the usual manner, threatening to kill her should she make any noise. He told her to remove his shorts and brief, and thereafter to remove her own shorts and panty. This time, however, he inserted his penis into her vagina. She told him it was painful. He then told her to suck his penis and to hold it back and forth as if in the act of masturbation. After ejaculating, he kissed her on the lips, neck and vagina, during which time her mother suddenly walked into the room. Her mother asked appellant what he was doing but he just left the house. Mary Rose then told her mother that appellant had asked her to hold his penis. When appellant returned, Mary Rose's mother asked her to step out of the house. After an hour, her mother fetched her and they proceeded to her godmother's house. There, Mary Rose revealed all the sexual abuses she was subjected to in the hands of her stepfather. She was thereafter brought by her mother to live at her

grandmother's house in Sta. Rosa, Laguna.[9]

Ms. Angelina Daligdig, the mother of Mary Rose, corroborated the above narration of her daughter. She testified that on November 24, 1996, she was at their residence in San Mateo, Rizal together with her daughter, Mary Rose and Enrique Labayne, her live-in partner for more than six (6) years. At around 2:30 in the afternoon, she was sleeping and she woke up to answer the call of nature. She stood up and saw Enrique Labayne and her daughter Mary Rose at the back of the door of their kitchen. Angelina saw with her own eyes her daughter sucking the penis of Enrique Labayne, and described it, thus: "Nakatayo si Enrique Labayne na nakababa ang short pants niya at brief at nakasubsob ang mukha ng anak ko sa titi niya, at subo-subo iyon ng anak ko." She was shocked at what she saw because she never expected that he would do such a thing to her daughter. She scolded him and uttered invectives against him. She asked him why he did that to her daughter to which Enrique Labayne responded, "hindi naman aabot iyon sa iniisip ko." She talked to her daughter who told her all that had happened. Her daughter was crying and pale because of fright. When she asked Mary Rose why the latter did not disclose the abuses, Mary Rose responded that she was afraid because Labayne threatened to kill them both. On November 28, 1996, she brought her daughter to Camp Crame to report the incident and have Mary Rose examined.

From the time Enrique Labayne was apprehended and incarcerated, Angelina received letters from him asking for forgiveness, which she presented as evidence. In a Letter dated December 12, 1997, the accused wrote:

"Huwag mo sanang patigas in and iyong puso at kalooban. Isiping makapagpatawad. Kung Diyos ay nakapagpatawad, ikaw pa kayang nilalang lang ang hindi makapagpatawad... Bigyan mo ako ng pagkakataon, patawarin mo na ako, Ma." [10]

In yet another letter, he asked for forgiveness repeatedly:

"Sana mapatawad mo na ako...please forgive me...Ma, sana mapatawad mo na ako at bigyan ng pagkakataong makapagpanibagong buhay." [11]

Dr. Jaime Rodrigo Leal testified that on November 28, 1996, while working at the PNP Crime Laboratory, he examined the complainant. His findings were reduced into writing in the following report:

FINDINGS:

GENERAL AND EXTRAGENTIAL:

Fairly developed, fairly nourished and coherent female child. Breasts are undeveloped. Abdomen is flat and soft.

GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type and congested hymen with shallow healed laceration at 9 o'clock. External vaginal orifice admits tip of examiner's smallest finger." [12]

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of application of any form of violence.

REMARKS:

Peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.[13]

Dr. Leal explained during his testimony that "congested" means that there is redness or swelling of the hymen as a

result of the secretion of blood into the vaginal tissue. This could have been caused by trauma, or the hymen could have come in contact with any hard, blunt object, including the male organ, within seven (7) days from the time of examination on November 29, 1996. He stated that it was, therefore, possible that the congestion in the hymen was inflicted on November 24, 1996, which is within the seven (7) day period.[14] On cross-examination, however, he said that, in rare cases of small children or a woman who is not yet of adult size, the laceration of the hymen could be caused by other factors such as by riding a bicycle, or could also be self-inflicted by using the finger of a woman.[15]

The last witness for the prosecution was Sr. Police Officer Darlito Dar. He testified that on November 29, 1996, he was assigned at the Criminal Investigation Division, National Capital Regional Office, Camp Crame, Quezon City. On said date, he was able to talk to Angelina Daligdig in connection with her complaint that her daughter, Mary Rose Daligdig was sexually molested. As part of the team tasked to conduct a follow-up investigation, he proceeded to Sta. Ana, San Mateo, Rizal together with Angelina Daligdig, PO2 Osea and Romeo Calsetas to invite the suspect, Enrique Labayne, for questioning. They went to the house of Enrique Labayne but the latter was not there. Fortunately, they chanced upon the suspect while cruising along B. Mariano St. They introduced themselves as policemen and informed him of the complaint filed by Angelina Daligdig and invited him for questioning. Labayne voluntarily went with them to Camp Crame. During the investigation, Mary Rose pointed to and positively identified Enrique Labayne as the one who molested her.

Appellant raised the defenses of denial and alibi.

Felix Soller Segui testified that he was in front of his vulcanizing shop at Resurreccion, San Mateo, Rizal, on November 18, 1996, when one of the alleged counts of Acts of Lasciviousness took place. Between 11:45 a.m. and 12:00 noon, Enrique Labayne met an accident near their shop. The motorcycle he was riding on turned to its side. Appellant was hurt and suffered bruises on his right hand and knee. Segui invited him into his house to be treated, after which Labayne and a neighbor waited for a mechanic to arrive. The mechanic repaired the motorcycle while they were chatting in front of the shop, about 10 to 15 meters away from the tricycle. Appellant Labayne bade him goodbye at around 4:00 p.m.[16]

Another witness, Jose San Jose, testified that he was at home on November 18, 1996 between 2:30 to 3:00 in the afternoon, when a certain "Eddie" came and fetched him to repair a motorbike. He proceeded to the corner of Resurreccion and General Luna St., Sta. Ana, San Mateo, Rizal, met an accident, at approximately 3:00 to 4:00 p.m. He saw the motorcycle of Labayne lying on the ground. Labayne had injuries on his palm, right elbow and right knee. San Jose repaired the motorcycle, and he and Labayne rode the same to the Petron gas station, where he left the appellant at past 4 p.m.[17]

Pablito Macagaling testified that on November 24, 1996, between 2:00 to 3:00 in the afternoon, he went to the house of Enrique Labayne in Sta. Ana, San Mateo, Rizal. After calling for appellant, a voice of a woman answered him that Labayne was taking a bath. Not long after, Labayne who was only covered in a towel peeped at the door. Magcaling told Labayne that he learned that he (Labayne) knows someone who is a jueteng operator. Labayne told him to wait at the Shoelander Restaurant near the plaza so they could talk. At around 4:00 p.m., they met at the designated place and discussed about seeing the jueteng operator the following week. They separated at approximately 4:30 p.m. They were not able to go to the jueteng operator as planned because he heard that Mr. Labayne was picked up by the CIS operatives.[18]

The last witness for the defense was appellant himself. Enrique Labayne testified that he and Angelina Daligdig, mother of the complainant, had been live-in partners since May 27, 1991. He worked as a barangay secretary of Sta. Ana, San Mateo, Rizal, from Mondays to Fridays, and was a jueteng operator at the same time. As a jueteng

administrator, which position he had held since September 1996, his duties required him to work every day of the week, including Sundays. He would report to work at the barangay hall at 8:00 in the morning. Because of the nature of his work in both jobs, there was never a definite time for him to go home. He could not recall where he was on October 4, 8, 14, 16 and 19, as well as on November 4, 9, 13, 1996.[19] According to appellant, he especially remembers where he was on the 18th of November 1996 because of his near-death experience that day.

As he was riding home from the barangay hall on November 18, 1996, Labayne met an accident at around 12:00 noon at the corner of Juan Luna and Resurreccion Streets. The roads were wet as the rain had just stopped. The wheel of his motorcycle slid and he was thrown off his bike and suffered minor bruises. "Ipeng" Segui approached him and treated his injuries for about 10 minutes. "Pepe" San Jose, a repairman, then came over and attended to his motor until 4:00 p.m. Thereafter, they both went to Petron, and then headed home separately. The rest of the events of that day were narrated as follows by the appellant:

Q: What time did you reach home on that particular day, November 18, 1996?

A: Before 5:00 p.m., I was already in the house, sir.

Q: Now, complainant's mother, Angelina Daligdig testified that she did not know of any accident for which you were involved in a motorcycle on that particular date, November 18, 1996, what can you say to the statement of Angelina Daligdig?

A: She was telling a lie, sir.

Q: Why do you say that she was telling a lie?

A: Because when I reached our house, they were playing tongits and she suddenly stood up when she saw me and asked me what happened, sir.

Q: And when she stood up and asked you what happened, what did you tell her?

A: I told her I was thrown off my motorcycle, sir.

Q: Now, at the time that she inquired what happened, what did you tell her?

A: I told her that I was thrown off my motorcycle, sir.

Q: Now, at the time that she inquired what happened, was (sic) your injuries still visible?

A; Yes, sir.[20]

On November 24, 1996 at around 2:00 p.m., when the alleged rape occurred, appellant testified that he was at home having just finished his lunch. Angelina was not minding him since they had a quarrel that morning and because she was still angry with him. Their quarrel stemmed from Angelina's interest in going to Japan.[21] He got angry and uttered hurting words. He said, "[S]ige magpunta ka ng Japan, gayahin mo ang ate mo, magpunta kayong pareho doon ng marami kayong maipadalang lapad sa inyong magulang na mukhang kuwarta." He even told her that he would go back to his legitimate family and bring his daughter, Ican, because he did not want her to grow up to acquire their manners. He added "[P]arepareho kayong demonyo." [22]

After lunch, Labayne went to the bathroom to take a shower. Inside the bathroom, he saw Mary Rose holding her vagina. He asked her where she learned to do that. Mary Rose answered, "[N]akikita ko po sa inyo ni Mama."

Their conversation did not last long because someone outside called for him. He heard Angelina answer that Labayne was in the bathroom. He went out of the bathroom and saw the defense witness, Pablito Macagaling, in front of their house. He told Macagaling to meet him at the Shoelander Restaurant and the latter left. He was still

standing by the door with Mary Rose holding on to him by his hips, when he heard Angelina get angry at her daughter. Angelina then whipped Mary Rose with her hands and he tried to stop and pacify her.[23]

Appellant further testified that Mary Rose usually sleeps at the foot of their bed ("gawing paanan") and has no separate room of her own. According to appellant, his letters to Angelina asking for forgiveness pertained to the bad words which he had uttered against her and her family at the heat of their arguments, and not because he had sexually abused her daughter Mary Rose, which fact he had always denied. He surmised that the charges leveled against him by the complainant and her mother is only an offshoot of their quarrel last November 24, 1996. During said quarrel, Angelina had told him, "kung hindi kita pakikinabangan, hindi ka na rin pakikinabangan ng pamilya mo." She also warned, "[L]uluhod ka rin sa akin." [24]

He also said that he was able to talk to Angelina during the preliminary investigation at the Fiscal's Office last May 1997 at the municipal hall. Inside the investigation room of the police, he embraced and kissed Angelina, and the latter reciprocated. The rest of their conversation, as narrated by the appellant, went as follows:

Q: What happened after you both embraced each other?

A: I kissed her and she let me kissed (sic) her, sir.

Q: And what happened after that?

A: And he (sic) told me, "I'm sorry Papa, naliwanagan ko na ang lahat and then she cried, sir."

Q: What was it that she was referring to na naliwanagan na ang lahat?

A: About these cases that they filed against me, sir.

Q: What about these cases filed against you, what is it all about?

A: They filed a case of Rape and Acts of Lasciviousness, sir.

Q: Did you come to know why she was sorry for filing the case?

A: No, sir. At first, she told me that ipakukulong lang niya ako dahil sa jueteng, sir.

Q: When was it that she told you that she wanted you to be jailed because of jueteng?

A: When I was arrested on November 29, sir.

Q: Did you ask her why instead of charging you for jueteng, you have been charged of Rape and Acts of Lasciviousness?

A: The investigator told her that if the case will only be for jueteng, he could be released immediately, sir.

Q: Now, going back to your conference or your conversation and discussion when you were inside the investigation room, how long did that discussion take place?

A: 20 to 30 minutes, sir.

Q: And what were the other matters you talked about?

A: She told me to wait for the result because she cannot change it anymore dahil siya ang mapapasama, sir.

Q: Aside from your statement where you said that she filed a case against you because of hatred, do you know of any reason aside from hatred why the complainant and her mother filed a case against you?

A: I do not know of any other reason, sir.

x x x [25]

As mentioned at the outset, appellant was found guilty by trial court of all the crimes charged. Appellant now raises the following assignment of errors before this Court:

I.

THE LOWER COURT ERRED IN NOT CONSIDERING THE MATERIAL INCONSISTENCIES AND/OR CONFLICTING TESTIMONIES OF PROSECUTION WITNESSES.

II.

THE LOWER COURT ERRED IN NOT APPRECIATING THAT COMPLAINANT'S TESTIMONY IS REHEARSED AND ONLY A MAKE-BELIEVE.

III.

THE LOWER COURT ERRED IN NOT CONSIDERING THAT THE ALLEGED LACERATION OF THE HYMEN OF THE COMPLAINANT WAS NOT CONSISTENT WITH THE OCCURRENCE OF THE ALLEGED RAPE.[26]

The first two assigned errors are interrelated, and hence, shall be discussed jointly. Appellant argues that Mary Rose's testimony is incredible and points to several inconsistent statements. For one, Mary Rose testified that during the alleged sexual molestation committed on October 4, 1996, her mother was not around and yet later on claimed that her mother was present.[27] Appellant, likewise, points to the conflict between Angelina Daligdig and complainant's testimonies as to whether Mary Rose was sleeping in the same or a separate room during the same October 4 incident.

It must be pointed out that the private-complainant is nine (9) years of age. She is still very young and could have been easily confused by the series of examinations conducted, not only because of her age but also because she was sexually assaulted numerous times and on different dates. It is but natural, therefore, for her to make mistakes and that there be some degree of inconsistency in her testimony. This Court has held that inconsistencies in the testimony of a witness in minor details reinforce rather than weaken credibility. Errorless testimony cannot be expected especially when the witness is recounting details of a harrowing experience.[28] In rape cases, the lone testimony of the offended party, if free from serious and material contradictions is sufficient to sustain a verdict of conviction.[29] A child of tender years, could not be expected to give complete and perfect testimony. Hence, testimonies of rape victims who are young and immature are credible.[30]

Besides, the alleged inconsistencies can be best explained by the fact that the mother went out of the house on some occasions but not on others. Noteworthy is the fact that the mother was soundly sleeping when appellant sexually assaulted the complainant.[31] Even granting that the mother was present, such fact would not have necessarily deterred the rape. The Court may take judicial notice of the fact that among poor couples with big families living in small quarters, copulation does not seem to be a problem despite the presence of other persons around them. There is no rule that rape can be committed only in seclusion. We have repeatedly declared that "lust is no respecter of time and place." [32]

Appellant further argues that the complainant is not credible and is a rehearsed witness, that it is unbelievable that Mary Rose did not shout for help at the time she was allegedly raped and abused. Neither did she complain or tell anyone about the alleged incidents. Unusual, too, is Mary Rose's claim that she immediately slept after her stepfather allegedly sexually molested her. If, indeed, Mary Rose had gone through a very harrowing incident, she would not have been able to sleep right away. Further, despite the alleged traumatic experience she was able to

continue her studies and passed her course with a high average.[33]

Appellant's arguments are clearly bereft of any merit. That Mary Rose did not shout for help is easily explained by the fact that appellant was holding a knife at her neck and threatened to kill her if she make any noise.[34] She testified as follows:

Q: After that, what happened after you were awakened by your stepfather?

A: He told me to go down to the door of our kitchen, sir.

Q: And then, what did he do?

A: He took a knife, sir.

Q: Where did he get the knife?

A: At the container of our knife, sir.

Q: What did he do with the knife?

A: He pointed it on my right neck, sir.

Q: What did he tell you?

A: He told me not to make any noise because "tutuluyan daw po niya ako," sir.[35]

It is not surprising that the complainant did not seek any help. A child of tender years would blindly follow her "stepfather" who not only exercised strong, moral and physical ascendancy over her, but who made explicit threats on her life should she make any noise.

Neither is the fact that Mary Rose did not disclose the traumatic experience to another person of any moment. Given that she was only nine years of age, it is possible that she herself was not certain as to whether she was at fault and should feel ashamed. It is also not uncommon for young girls to conceal for some time the assault on their virtue because of the rapist's threats on their lives.[36]

Anent the "unusual" reaction of the victim after being raped, this Court has held that the lack of concrete evidence of any unusual behavior of the victim after the alleged rape does not prove that there was in fact no such unusual behavior.[37] The victim's emotional and physical trauma need not be proven. The Court recognizes the fact that different people act differently to a given type of situation, for there hardly can be cited any known standard form of behavioral response when one is confronted with a strange or startling experience.[38] Nobody can tell how a victim of sexual transgression is supposed to act or behave after her ordeal. One should not expect a girl of complainant's age to act like a mature woman under similar circumstances. At any rate, it is not farfetched that the victim slept after she was raped for fear or because she wanted to forget the horror just committed upon her chastity.

All told, appellant's first two assigned errors relate to the credibility of Mary Rose as a witness. Well-settled is the rule that this Court will not disturb the findings of the trial court as to the credibility of a witness. This is so because the trial court has a better vantage point in observing the candor and behavior of the witness. We see no reason to overturn the trial court's characterization of Mary Rose as a witness:

The victim has been firm and consistent in her narration of facts anent her ordeal in the hands of the accused. Her candid and straightforward narration bears the earmarks of credibility. (Peo. vs. Umali, 242 SCRA 17)It is not difficult to give credence to herein victim's cause. Her detailed account of the incidents of her sexual molestation by accused could not have been fabricated and rehearsed, proceeding as it did from a doubtlessly

immature individual, ignorant of the ways of the outside world. Her testimony must, therefore, be given weight as it is credible (Peo. Vs. Espinosa, 247 SCRA 66) Testimonies of child victims are given full weight and credit (Peo. Vs. Digno, Jr., 250 SCRA 237).

Finally, appellant argues that the trial court erred in holding that the alleged laceration of the hymen of the victim is consistent with the occurrence of the rape. He points out that Dr. Leal testified that the shallow, healed laceration could have been sustained more than seven days from the time of the examination. The examination was conducted on November 29, 1996 while the rape was allegedly committed on November 24, 1996, or a span of only five days.

Such argument, too, is without merit. As this Court has previously pronounced, the laceration of the hymen is not an element of the crime of rape. A woman might have had previous sexual intercourse and yet the hymen remains unruptured, while others might have experienced sexual relations, but with laceration of the hymen.[39] Consequently, it is of no moment that the laceration of the hymen is not consistent with the occurrence of the rape. What is vital is the fact that the victim categorically pointed to appellant as the culprit who sexually abused her. It would be unlikely that a young girl would concoct a story of defloration, allow an examination of her private parts and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by the desire to have the culprit apprehended and punished.[40]

In a strained effort to seek an acquittal, appellant argues that the rape charge against him was triggered by the disagreement between himself and Angelina, the victim's mother, regarding his refusal to let her go to Japan. This incident is simply too flimsy to induce so much resentment. Even when consumed with hatred or revenge, it takes nothing less than psychological depravity for a mother to concoct a story too damaging to the welfare and well-being of her own daughter.[41]

Thus, this Court affirms the finding of the trial court that the guilt of the appellant for the crimes charged has been established beyond reasonable doubt. However, there has been a misapplication of the proper penalty that must be rectified.

In order for the death penalty to be imposed for the crime of rape in accordance with R.A. 7659, an allegation of the complainant's age as well as filial relationship is essential. Both minority and actual relationship between the parties must be both alleged and proved; if not, it bars conviction of rape in its qualified form. The qualifying circumstances which increase the penalty by degree rather than merely affect the period of the penalty as in the case of aggravating circumstances, must be properly pleaded in the information consistent with the constitutional right of the accused to be informed of the charges against him. Consequently, there would be a denial of due process if after being charged with simple rape, he is convicted of its qualified form punishable by death.[42]

Undoubtedly, the fact that Mary Rose was only nine years old when she was raped by appellant was alleged in the information and duly proven by the prosecution not only through the testimonies of the victim and her mother but also through the presentation in evidence of Mary Rose's birth certificate. However, the attendant circumstance of relationship which would qualify the offense was not alleged in the indictments on which he was arraigned. For this reason the death penalty imposed on appellant for statutory rape should be reduced to reclusion perpetua.

WHEREFORE, premises considered, judgment is hereby rendered in these cases as follows:

1. Finding herein accused Enrique Labayne y Aguilar GUILTY beyond reasonable doubt of the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and sentencing him to the penalty of reclusion perpetua, to indemnify complainant Mary Rose S. Daligdig in the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and to pay the costs.

2. Finding herein accused Enrique Labayne y Aguilar GUILTY beyond reasonable doubt of nine (9) counts of Acts of Lasciviousness as defined and penalized under Article 336 of the Revised Penal Code, and sentencing him for each count to suffer the penalty of six (6) months of arresto mayor as minimum to six (6) years of prision correccional as maximum, to indemnify complainant Mary Rose S. Daligdig in the amount of P20,000.00 for each count as moral damages, and to pay the costs.

SO ORDERED.

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

Pardo, J., on sick leave.

De Leon, Jr., J., on leave.

[1] Rollo, p. 74.

[2] Records, p. 1.

[3] Rollo, p. 12.

[4] Exhibit "E," Records, p. 111.

[5] Id., at 6.

[6] Id., at 8.

[7] Id., at 10.

[8] Id., at 10-21.

[9] Id., at 21-26.

[10] Exhibits "G" and "G-1."

[11] Exhibits "H" and "H-1."

[12] Exhibit "D".

[13] Ibid

[14] TSN, April 25, 1997, pp. 8-10.

[15] Id., at 11.

[16] TSN, July 3, 1997, pp. 2-4.

[17] TSN, July 11, 1997, pp. 2-4.

[18] TSN, July 4, 1997, pp. 2-5.

[19] TSN, July 8, 1997, pp.3-8.

[20] TSN, July 8, 1997, pp. 7-8.

[21] Id., at 8-9.

[22] Id. at 10.

[23] Id. at 11-13.

[24] Id. at 14-16.

[25] Id. at 18-21.

[26] Appellant's Brief, p. 3.

[27] Ibid.

[28] *People v. Del Prado*, 110 Phil 1034 (1960); *People v. Sagucio*, 277 SCRA 639 (1970).

[29] *People v. Gementiza*, 285 SCRA 478 (1998).

[30] *People v. Guilbao*, 217 SCRA 64 (1993).

[31] TSN, April 18, 1997, pp. 7-8.

[32] *People v. Ignacio*, 233 SCRA 1 (1991).

[33] Rollo, p. 84.

[34] [TSN, March 20, 1997, pp. 12-16.]

[35] TSN, March 20, 1997, p. 13.

[36] *People v. Abordo*, 224 SCRA 725 (1993).

[37] *People v. Villar*, 322 SCRA 393 (2000).

[38] *People v. Panis*, G.R. 131848-50, September 5, 2000, citing *People v. Luzurata*, 286 SCRA 487 (1996).

[39] *People v. Moreno*, 220 SCRA 292 (1995).

[40] *People v. Guibao*, 217 SCRA 64 (1993).

[41] See note 36, *supra*.

[42] *People vs. Magbanua*, 319 SCRA 719 (1999).

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