PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINADOR TABION, ACCUSED-APPELLANT.

G.R. No. 132715. October 20, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The Information charging appellant with rape failed to allege the minority of his daughter-victim. As a result, he cannot be convicted of qualified rape and sentenced to death, consistent with the Court's ruling in People v. Ramos[1] that both the age of the victim and her relationship with the offender must be clearly alleged in the information. This doctrine is not a “mere technicality”; it rests on the constitutional principle that the accused are entitled “to be informed of the nature and cause” of the accusations against them, as stated in the information to which they are asked to plead prior to trial. In other words, the accused in the present case can be convicted only of the crime alleged in the Information and duly proven during the trial. In sum, he can be held guilty of simple rape only, which was the crime charged in the Information and proven during the trial.

The Case

Before us for automatic review is the Decision[2] of the Regional Trial Court, Branch 61 of Bogo, Cebu in Criminal Case No. B-00121, convicting Dominador Tabion of qualified rape and imposing upon him the supreme penalty of death. The case arose from the Information[3] dated October 30, 1996, filed by 3rd Assistant Provincial Prosecutor Eric F. Menchavez, charging appellant as follows:

> "That on the 11th day of May, 1996 at 9:30 o'clock in the morning, more or less, in Sitio Bagong Lipunan, Barangay Kangka-ibe, Municipality of Bantayan, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and with the use of a hunting knife and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge [of] his daughter REGIN[4] TABION, against her will and consent."

Appellant was arraigned on April 3, 1997. Duly assisted by his counsel de oficio, he entered a plea of not guilty.[5] Thereafter, trial ensued.

The Facts

Version of the Prosecution

The Office of the Solicitor General presents the facts, as viewed by the prosecution, in this wise:[6]

> “On May 11, 1996 at about 9:30 in the morning, complainant Regin Tabion, a single girl barely sixteen (16) years old, was at their home in Sitio Bagong Lipunan, Barangay Kangka-Ibe, Municipality of Bantayan, Province of Cebu, weaving baskets when accused Dominador Tabion, who was her father and her only companion at the time, as her mother had gone to the town proper while her younger brothers were playing in the house of her aunt, called her to wash the plates. She complied.
>
> “After washing the plates, she was ordered by the accused to get inside her parents' room. She obeyed.

> "When she was already inside the room, the accused, who was at the time wearing a T-shirt and short pants and holding a ten (10) to twelve (12) inch long hunting knife in his right hand, ordered her to lie down on the bed and to remove her panty. At the time she was wearing a T-shirt and a skirt on top of her bra and white panty. The accused then told her: "do you see this knife, if you will resist, do you know what I will do, I will thrust this knife to your neck and you know me". Afraid of the accused, she reluctantly lay on the bed and removed her panty. Thereupon, the accused separated and spread out her legs, lay on top of her, pulled out his penis and thrust it into her vagina. She felt pain, a tearing pain inside her vagina. The accused then made a series of push and pull or pumping motions for about one (1) minute, all the while embracing her with his left hand and pointing the knife at her neck with his right hand. The accused's pumping motions and the intense pain she felt in her vagina made her to urinate but blood flowed out instead. She could not resist the accused because she was afraid of him and of his threat to kill her and her family.
>
> "After consummating the sexual act, the accused went out, and she was left in the room crying. She did not tell her mother of what happened because her father warned her he would kill all of them should she tell her.
>
> "Two days later, the accused again ordered her to get inside the room and forced her to have sexual intercourse with him. The accused had sexually assaulted her ten times up to July 10, 1996.
>
> "After the tenth sexual assault against her she could no longer bear the pain of what her father had been doing to her, so she told her mother everything and complained to the authorities.
>
> "On July 22, 1996, she underwent medical examination by Dra. Nayda P. Bautista, a resident physician, at the Bantayan District Hospital. Her findings, which were reduced in writing, were as follows:
>
> PHY. EXAM. FINDINGS:
>
> A. Easily admits two (2) examining fingers.
>
> B. Vaginal OS with old healed lacerations at 5 x 7 o'clock positions.
>
> C. Cervical OS non-tender but erythematous.
>
> "SEC. EXAM.
>
> 1. Cervic -- firm, non-tender
>
> 2. Adnaxae -- non-tender
>
> 3. Discharges -- whitish, non-foul smelling."

"Elaborating on her findings, Dra. Bautista declared that the patient was no longer a virgin; that there was evidence of penetration of male organ into the vagina of the patient; that in her opinion there were several insertions of the male organ into the vagina; and that the old healed lacerations at the lower part of the opening could be two (2) months old, more or less, which coincided with the patient's statement that she was raped by her on May 11, 1996." (Citations omitted)

Version of the Defense

On the other hand, appellant presented his version of the facts, as follows:[7]

> "Evidence for the defense shows that on May 11, 1996 at about 8:00 o'clock in the morning, herein accused-appellant went to his place at work at Bagong Lipunan, Bantayan, where he is a self-employed man doing some handicrafts. From their residence to his working place, it would take him fifty (50) minutes to negotiate such distance which is about one (1) kilometer. Once he left the house in the morning, he usually returns in the evening. At the time said incident allegedly happened, he testified that some of his children were in their house while the others were in Iloilo. He denied having raped her daughter and that the allegations

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> made by the complainant were all fabricated as the latter and her mother had a grudge against the accused-appellant. He told his daughter and his wife to stop their vice of drinking with their male friends. However, instead of following his advice, they got angry with him. As a result, the couple kept on quarreling and never had a good relationship since then. When he was already in jail, he wrote his wife and asked why she charged him of rape, however, his letter remained unanswered as she refused to talk to him. (TSN, October 21, 1997, pp. 2-7; TSN, October 30, 1997, pp. 1-6; TSN November 11, 1997, pp. 1-7)"

Ruling of the Trial Court

Assessing the complaining witness and her testimony, the trial judge wrote:[8]

> "[During] the entire testimony of the complainant, the Court x x x observed her demeanor and behavior in the narration of [the] facts of the incident. The Court observed her sincerity in testifying against her own father. She show[ed] sign of coolness, calmness and her answer flow[ed] naturally, as if the incident was still fresh in her memory. She appear[ed] forlorn, desolate, lonely but courageous enough to narrate how her father rape[d] her on May 11, 1996 and repeated it two (2) days thereafter.
>
> "There was no motive for her to testif[y] falsely against her father or to falsely fabricate in so serious and heinous a crime if it is not true that she was rape[d].
>
> "The statement of the victim that she was rape[d] by her father was corroborated by Dra. Nayda Bautista when she testified that the old healed lacerations present at the time of the examination coincide[d] [with] the patient['']s statements that she was allegedly rape[d] on May 11, 1996 or it may be two (2) months old, more or less (Tsn, Dra. Bautista, July 22, 1997, p. 9).

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> "The testimony of complainant is replete with details of the incident, unshaken and unwavering even on cross-examination and that it is hard to fabricate and [manufacture] the sequence of event[s] which would seriously cast dishonor on her maidenhood.
>
> "The complainant is young, she is only 16 years old and it would be unnatural to expose herself to social humiliation, go to the doctor for examination and expose her parts and undergo the agony of a public trial, if such is not the truth."

Describing the appellant's defenses of denial and alibi as "inherently weak," the trial judge cited extant jurisprudence: "For alibi to be given weight and credit, it must be established that it would be physically impossible for him to be present at the scene of the incident or crime"; and denial "cannot prevail over the positive and unshaken testimony of the x x x the complainant." The trial court further held that "[t]he motive proffered by the accused is not so strong enough to overthrow the positive and affirmative declaration of the complainant."

Additionally, the court a quo noted that "not even [appellant's] wife ever visited him in jail. Not one of his children, 11 children, ever visited him. It only shows that his wife and children condemned the accused [for] what he had done to [his] daughter. He was then left alone. He is being ostracized by his own family. They cannot forgive the bestial act of their father."

Concluding, the trial court said that it "gives more weight and credit to the testimony of the complainant x x x that she was indeed rape[d] and the rapist was her father and that she was sixteen (16) years old at the time she was sexually abused." It thus disposed as follows:

> "WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code in relation to Rep. Act No. 7659, Sec. 11 as amended and hereby imposes upon the accused, Dominador Tabion, the penalty of death."

In view of the penalty imposed, this case was elevated direct to this Court for automatic review.[9]

Issue

In his Brief,[10] appellant makes this lone assignment of error:[11]

> "The court a quo gravely erred in finding that the guilt of the accused-appellant for the crime charged has been proven beyond reasonable doubt."

This Court's Ruling

The appellant may be convicted only of simple, not qualified, rape. Hence, his penalty should be reduced to reclusion perpetua.

Main Issue:

Sufficiency of Prosecution Evidence

In his Brief, appellant pleads for acquittal, on the anemic argument that the private complainant instituted the criminal charge, merely because she hated him so much for his having been a member of the NPA (New People's Army). Without much ado, he submits that the evidence of the prosecution was not enough to overcome the constitutional presumption of his innocence.[12]

The settled guiding principles in reviewing rape cases are: (1) to accuse a man of rape is easy, but it is difficult for the accused to disprove, though he may be innocent; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense.[13] Corollary to these is the principle that when a victim of rape says that she was defiled, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[14] The application of this doctrine becomes even more compelling when the culprit is a close relative of the victim.[15]

After meticulously perusing the records and evaluating the evidence, the Court is convinced beyond doubt of the credibility and the sufficiency of the prosecution evidence establishing that appellant raped his own daughter Regin. As the solicitor general observed, the testimony of the victim is replete with details; she was categorical, straightforward, unshaken and unwavering even during the grueling cross-examination. She candidly related her sordid tale thus:[16]

> "Q. Miss Regine Tabion, please tell this Court, where you were on 11th day of May, 1996 at about 9:30 o'clock in the morning?
>
> A. I was at home.
>
> Q. And your house is located in Bagong Lipunan, Bantayan, Cebu?
>
> A. Yes.
>
> Q. While you were in your house, what were you doing at that time?
>
> A. I was weaving baskets.
>
> xxx xxx xxx
>
> FISCAL MAÑALAC:

Q. While you were weaving a basket, did your father [call] you?

A. Yes, he called me to wash the plates.

Q. When you[r] father called you to wash the plates, did you wash the plates?

A. Yes.

Q. What happened next after you washed the plates?

A. He told me to get inside the room.

Q. Whose room did he [ask] you to get into?

A. The room of my parents.

Q. And at the time that your father asked you to get inside the room, will you please tell us whether there were other persons other than the accused and yourself?

A. No, we are only 2.

Q. What did you do upon being told to get inside the room?

A. I followed him.

Q. Did he tell you why he want[ed] you to get inside the room?

A. No.

Q. When you went inside the room, what happened next?

A. He ordered me to lie down on the bed and to remove my panty.

Q. At the time he told you to lie on the bed and to remove your panty, can you tell the Court whether he was armed at that time?

A. Yes, a hunting knife.

Q. Could you describe the hunting knife?

A. Witness describing that it was around 10 inches long more or less.

Q. How about the leng[th]?

A. 10 or 12 inches.

Q. And where was this knife at that time when you saw it?

A. He was holding [it] at that time with his right hand.

Q. And he was holding that knife when he told you to lie down and to remove your panty?

A. Yes.

Q. By the way, what kind of clothes were you wearing at that time?

A. I was wearing a skirt.

Q. After he told you to remove your panty, did you remove your panty?

A. Yes.

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Q. Why did you remove your panty?

A. Because I was afraid.

Q. Afraid of whom?

A. My father.

Q. Why were you afraid of your father?

A. Because he is a bad father.

COURT:

Q. Why you do say that he is a bad father on May 11, 1996?

A. Because he is member of the NPA in Negros Occidental.

Q. What if he is a member of the NPA, why did you say that he is bad father?

A. Because he killed many people.

FISCAL:

Q. How did you feel, what were your feelings at that time when you were removing your panty?

A. I was afraid.

Q. After you had removed your panty, what happened next?

A. He said: 'Do you see this knife, if you will resist, do you know what I will do, I will thrust this knife to your neck and you know me.'

Q. After he said those words, what happened next?

A. He lay on top of me.

Q. What was the first thing he did, when he lay on top of you?

A. He pulled out his penis and inserted [it] into my vagina.

Q. Before he inserted his penis to your vagina, did you tr[y] to resist, to fight him or repel him?

A. No.

Q. Why not?

A. Because I was afraid.

Q. What did he do first before inserting his penis into your vagina?

A. He held my 2 knees and spread them open.

Q. Could you demonstrate how wide did you open your legs?

A. (Witness demonstrated by spreading her legs up to 10 inches, more or less.)

Q. And when your legs [were] spread you were lying down on bed, correct?

A. Yes.

Q. When you were in that position, lying down and he was spreading your legs, did you [notice] his penis?

A. No.

Q. How did you know that his penis went inside your vagina?

A. I felt pain.

xxx xxx xxx

FISCAL MAÑALAC:

Q. What did you feel inside your vagina at the time you felt the pain?

A. Pain, tearing pain.

Q. After you felt pain, when he inserted his penis, what did he do, did he make a push and pull movement?

A. Yes.

Q. How long did he make this movement of push and pull?

A. Very short.

Q. Was it about 1 minute?

A. Yes.

Q. In your own estimate, how long did the push and pull action [last]?

A. Maybe 1 m[i]n[u]te.

xxx xxx xxx

Q. After the pumping motion for 1 minute, did you feel any liquid inside your vagina?

A. No.

Q. What happened to your vagina as a result of the pumping action inside your vagina?

A. Blood came out.

xxx xxx xxx

FISCAL MAÑALAC:

Q. You said blood came out from your vagina, how did you know that blood came out from your vagina?

A. Because of the pain, I was able to urinate and then blood came out.

Q. At the time that the accused was pumping, inserting his penis inside your vagina, where was his right hand?

A. At my side. (Witness demonstrating that her hands were [in a] straight position)

Q. You mean both hands?

A. Yes.

Q. How about the arms and hands of the accused, where were they at that time he was pumping?

A. The left hand was embracing me.

Q. How about the right hand?

A. The right hand was holding the knife.

Q. And where was the knife pointed to?

A. At my neck.

Q. How far was the tip of that knife to your neck?

A. About 3 or 4 inches from the neck.

Q. How long was this knife pointed to your neck?

A. After he consummated the sexual act.

Q. Just for the records, to make it clear, you[r] father who is the accused Dominador Tabion, who raped you that May 11, 1996, could you please tell us, point him out to us 1 more time?

A. Yes. (Witness pointing to a person wearing white t-shirt, who when asked answered to the name of Dominador Tabion.)

Q. After he finished or consummated the sexual act, what did he do?

A. After that he went outside.

Q. And how about you, where did you go?

A. I was there inside the room.

Q. What were you doing inside the room?

A. I was crying.

Q. Did you report this incident to your mother?

A. No.

Q. Why not?

A. At that time, my mother was not around, she went to the town proper and she returned in the afternoon.

Q. After your mother arrived, did you report the incident?

A. No.

Q. Why not?

A. I was afraid because he warned me that he will kill all of us if I tell my mother."

In the incestuous rape of a minor, proof of force and violence exerted by the aggressor is not essential. The moral and physical ascendancy of the father over his daughter-victim is sufficient to cow her into submission to his bestial desires.[17] Fear oftentimes overwhelms the victim. In the instant case, the appellant enhanced his physical supremacy over his daughter by holding a knife to her neck. In the face of such brutal intimidation, she knuckled under, thus enabling him to satisfy his incestuous lust.

The victim's testimony was corroborated by the medical findings of Dr. Nayda P. Bautista on July 22, 1996:[18]

"PHY. EXAM. FINDINGS:

A. Easily admits two (2) examining fingers.

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B. Vaginal OS with old healed lacerations at 5x7 o'clock positions.

C. Cervical OS non-tender but erythematous.

SEC. EXAM:

1. Cervix - firm, non-tender

2. Adnaxae - non-tender

3. Discharges - whitish, non-foul smelling."

Explaining her report, Dr. Bautista testified[19] that the victim's vagina admitted two fingers, signifying penetration by a male organ. The two-month old healed lacerations of the skin and the underlying tissue could have been caused by a "blunt force" inflicted at a time coinciding with the patient's statement that she was raped on May 11, 1996. These medical observations clearly support the incident of rape.

As it is, appellant's trite defenses of alibi and denial cannot prevail over the positive and categorical testimony of the complainant.[20] As a rule, alibi is viewed with suspicion and received with caution, not only because it is inherently weak and unreliable, but also because it can easily be fabricated. To prosper, such defense must be convincing enough to preclude any doubt on the physical impossibility of the presence of the accused at the locus criminis at the time of the incident.[21] Such, however, is not the case herein.

Appellant simply claimed that the whole day of May 11, 1996, he was at his place of work, which was about one kilometer away from his house.[22] While it would ordinarily take him fifty (50) minutes to trudge the rough trail, it would not be impossible for him to do so in only fifteen (15) minutes if he were to walk fast. This he readily admitted during cross-examination.[23] Thus, it was not at all impossible for him to have gone back to his house to rape his own daughter during that fateful morning.

As regards appellant's contention that private complainant merely hated him for having been a former NPA, we agree with the solicitor general that, even if true, such shallow reasoning could not have moved Regin to falsely accuse her own father of the heinous crime of rape and, in the process, subject herself and her family to social humiliation, to the disgrace and the trauma attendant to a prosecution for rape, and the lifetime shame incident thereto. Indeed, no young girl of decent repute would allow an examination of her private parts or subject herself to the shame, embarrassment and humiliation of a public trial, if she has not in fact been raped.[24]

Proper Penalty

The Constitution grants the accused the inviolable right “to be informed of the nature and cause of the accusation against him.”[25] Doctrinally, this means that every element of the offense must be alleged in the complaint or information.[26] The accused "is presumed to have no independent knowledge of the facts that constitute the offense"[27] charged.

Republic Act 7659, which took effect on December 31, 1993, imposes the death penalty in the event rape is attended by any one of the “seven new special circumstances” enumerated in the said statute.[28]

Pursuant to the above-mentioned constitutional right of the accused and the extant jurisprudence on the subject, we have held that the death penalty may be imposed only if the information has alleged and the evidence has proven both the age of the victim and her relationship to the offender. In People v. Perez,[29] the Court ruled that because “the circumstance that [the victim] was less than eighteen years of age at the time of the rape was never, in any manner, stated in the Information,” the accused could be convicted only of simple rape and sentenced to reclusion perpetua, not death. We said that it was the concurrence of the minority of the victim and her

relationship with the offender that would have qualified the rape as heinous and thus justified the imposition of the supreme penalty.[30]

In the instant case, the age of the victim was not alleged in the Information filed against appellant. Because not all the elements of qualified rape were alleged in the Information, the death sentence cannot be meted out to him.

The Court further notes that the trial court failed to impose upon appellant the indemnity ex delicto provided by the Revised Penal Code. The award thereof to the rape victim is mandatory.[31] Furthermore, in People v. Prades[32] we also held that in the crime of rape, moral damages may be additionally awarded to the victim in such amount as the Court deems just. We declared: "[T]he fact that complainant has suffered the trauma of mental, physical and psychological sufferings which constitute the bases for moral damages [is] too obvious to still require the recital thereof at the trial by the victim, since the Court itself assumes and acknowledges such agony on her part as gauge of her credibility. What exists by necessary implication as being ineludibly present in the case need not go through the superfluity of still being proved through a testimonial charade."[33]

Moreover, in the crime of rape, the relationship between the offender and the victim is aggravating.[34] This circumstance justifies the imposition of exemplary damages as well.

Based on the foregoing, we thus award to the victim P50,000 as indemnity ex delicto, another P50,000 as moral damages and P25,000 as exemplary damages.

WHEREFORE, the appealed Decision is hereby MODIFIED. Appellant Dominador Tabion is found GUILTY of simple, not qualified, rape and is sentenced to reclusion perpetua. He is further ordered to PAY Regin Tabion P50,000 as indemnity ex delicto, another P50,000 as moral damages and P25,000 as exemplary damages. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Vitug, Mendoza, Purisima, Pardo, Buena, Gonzaga-Reyes, and De Leon, JJ., concur.

Bellosillo, Kapunan, Quisumbing, and Ynares-Santiago, JJ., abroad on official business.

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[1] 296 SCRA 559, September 25, 1998. See also People v. Medina, GR No. 126575, December 11, 1998, People v. Calayca, GR No. 121212, January 20, 1999; People v. Abella, GR No. 131847, September 22, 1999.

[2] Penned by Executive Judge Ildefonso G. Mantilla; rollo, pp. 14-25.

[3] Rollo, p. 5.

[4] Sometimes spelled "Regine" in the records.

[5] See records, pp. 19 and 20.

[6] Appellee’s Brief, pp. 2-5; rollo, pp. 78-81. The Brief was signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Rodolfo G. Urbiztondo and Solicitor Luis F. Simon.

[7] Rollo, pp. 41-42.

[8] Ibid., pp. 8-10; rollo, pp. 21-23.

[9] This case was deemed submitted for resolution upon receipt by the Court of appellant's Reply Brief on May 7, 1999.

[10] Rollo, pp. 39-46.

[11] Appellant's Brief, p. 1; rollo, p. 39. This was signed by Attys. Araceli Adan Rubin and Amelia C. Garchitorena of the Public Attorney's Office.

[12] Ibid., p. 7; rollo, p. 45.

[13] People v. Ramirez, 266 SCRA 335, January 20, 1997; People v. Abad, 268 SCRA 246, February 13, 1997; People v. Corea, 269 SCRA 76, March 3, 1997; People v. San Juan, 270 SCRA 693, April 4, 1997; People v. Butron, 272 SCRA 352, May 7, 1997; People v. Betonio, 279 SCRA 532, September 26, 1997; People v. Castromero, 280 SCRA 421, October 9, 1997.

[14] People v. Garcia, 288 SCRA 382, March 31, 1998; People v. Abad, ibid.; People v. Julian, 270 SCRA 733, April 4, 1997; People v. Butron, ibid.; People v. Rabosa, 273 SCRA 142, June 9, 1997; People v. Mercado, 275 SCRA 581, July 17, 1997; People v. Antido, 278 SCRA 425, September 4, 1997.

[15] People v. Burce, 269 SCRA 293, March 7, 1997.

[16] TSN, September 16, 1997, pp. 2-13.

[17] People v. Sagaral, 267 SCRA 671, February 7, 1997; People v. Escober, 281 SCRA 498, November 6, 1997; People v. Tan Jr, 264 SCRA 425, November 20, 1996.

[18] Exh. "A"; records, p. 8.

> [19] "Q. Doctor, I would like to show you [a] medical certificate dated July 23, 1996[;] you examined the victim on July 22, 1996 with findings A. It admits two (2) examining fingers[;] could you please explain, what is the significance of the findings, when the vagina easily admits the insertion of two (2) examining fingers.
>
> A. The significance after examining the patient using internal examinations, if the vagina admits easily 1 finger it signifies that the patient is no longer a virgin[;] [t]hat in her case upon examining, it easily admits 2 fingers[;] that the patient [--] there is evidence of penetration of male organ into the vagina of the patient.
>
> Q. And in your expert opinion, you mean that there is previous or several penetration of the penis into the vagina?
>
> A. There are several insertions of the male organ into the vagina and maybe a single insertion of the male organ may even cause [it;] there is a previous [laceration].
>
> COURT:
>
> The effect of repeated push and pull, pumping.
>
> A. It maybe result of push and pull insertion.
>
> FISCAL MAÑALAC:
>
> Q. Considering it admits 2 fingers, it means to say, more or less, the victim is no longer a virgin and it is possible that she ha[s] had several intercourse in the past?
>
> A. Yes.
>
> Q. Finding No. 2 - Vaginal OS with old healed lacerations at 5x7 o'clock positions. Could you please tell us what this means?
>
> A. Where there is [an] opening it is called vaginal OS. When [I] examined the patient there are old lacerations [in] the skin and the underlining tissue[;] there is tear in the underlining tissue which maybe caused by blunt

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force and it is an old healed [laceration] at the lower part of the opening.

Q. Now, this [laceration] at 5x7 o'clock, does this also mean that there have been insertions of the penis into the vagina causing lacerations in order to admit entry of the penis?

A. Yes.

Q. Now, in this particular case, in your own medical expert opinion, judging from the healed lacerations, could you tell us how old, more or less, [these] injuries were at the time you examined her on July 22, 1996?

A. Yes, when the patient was examined, the findings that there was an old healed [laceration], meaning that the lacerations present x x x may coincide [with] the patient's statement that she was allegedly raped on May 11, 1996[;] it may be 2 months old lacerations, it may be 2 months old more or less, there is possibility of the injuries sustained on May 11, 1996.

Q. Last Finding No. 4 - Cervix firm, non-tender, Adnaxae non-tender, discharges-whitish, non-foul smelling. Could you please tell us, what is the significance of this particular [finding]?

A Since the patient was examined, she sustained old lacerations, this [finding --] cervix-firm, non-tender [--] more or less rules out any recent [one], since the opening easily admits 2 or 3 fingers that is only to rule out any internal injuries."

(TSN, July 22, 1997, pp. 6-10.)

[20] People v. Catoltol Sr., 265 SCRA 109, November 28, 1996; People v. Andres et al., 296 SCRA 318, September 25, 1998.

[21] People v. Tulop et al., 289 SCRA 316, April 21, 1998; People v. Pili et al., 289 SCRA 118, April 15, 1998; People v. Balmoria, 287 SCRA 687, March 20, 1998.

[22] TSN, November 11, 1997, pp. 1-2.

[23] Ibid., pp. 4-5.

[24] People v. Bersabe, 289 SCRA 685, April 27, 1998; People v. Erese, 281 SCRA 316, November 5, 1997.

[25] § 1(2), Art. III of the Constitution.

[26] Balitaan v. CFI of Batangas, 115 SCRA 729, 739, July 30, 1982; cited in People v. Feliciano Ramos, supra; and People v. Medina, supra.

[27] Ibid.

[28] "Art. 335. x x x.

x x x x x x x x x

"1. 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.

"2. When the victim is under the custody of the police or military authorities.

"3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

"4. When the victim is a religious or a child below seven (7) years old.

"5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

"6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

"7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."

[29] 296 SCRA 17, September 24, 1998, per Regalado, J.

[30] People v. Ramos, supra; People v. Medina, supra; People v. Calayca, supra.

[31] Art. 100, in relation to Art. 104. See People v. Prades, 293 SCRA 411, 430, July 30, 1998; People v. Pili, 289 SCRA 118, April 15, 1998; People v. Bugayong, GR No. 126518, December 2, 1998.

[32] Ibid. See also People v. Calayca, supra; People v. Lozano, 296 SCRA 403, September 25, 1998.

[33] People v. Prades, supra.

[34] People v. Perez, 270 SCRA 526, March 26, 1997; People v. Tan Jr., supra.

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