PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSE VIRREY Y DEHITO, APPELLANT.

G.R. No. 133910. November 14, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

To justify the imposition of the death penalty on a father accused of raping his own minor daughter, the prosecution must prove beyond reasonable doubt, not only that he committed the offense charged, but also that it was perpetrated under any of the qualifying circumstances mentioned in RA 7659. In the present case, the prosecution failed to prove that the victim was below 18 years of age at the time of the rape. Hence, the proper penalty is reclusion perpetua, not death.

The Case

For automatic review by this Court is the Decision[1] dated April 1, 1998 of the Regional Trial Court of Quezon City, Branch 219, finding Jose Virrey y Dehito guilty beyond reasonable doubt of qualified rape. The decretal portion of said Decision reads as follows:

> "WHEREFORE, finding accused JOSE VIRREY guilty beyond reasonable doubt of having committed the crime of rape as charged in the Information and defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659, the Court hereby sentences him (1) to suffer the penalty of death; (2) to pay the complainant the sum of P50,000.00 as moral damages and P30,000.00 as exemplary damages; and (3) to pay the costs.[2]

The Complaint[3] against appellant, subscribed and sworn to by Madelyn Virrey y Besario before Assistant City Prosecutor Danilo B. Vargas, was filed on September 18, 1996. It reads as follows:

> "That on or about the 15th day of September, 1996, in Quezon City, Philippines, the said accused father of herein complainant/MADELYN VIRREY Y BESARIO, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with said complainant/MADELYN VIRREY Y BESARIO, a minor, 13 years old, without her consent and against her will, to her damage and prejudice in such amount as may be awarded to her under the provisions of law."

When arraigned on October 1, 1996, appellant, with the assistance of his counsel de oficio, pleaded "not guilty."[4] In due course, he was tried and found guilty of raping his 13-year old daughter.

The Facts

Version of the Prosecution

The Office of the Solicitor General summarized the evidence for the prosecution in this wise:[5]

> "On September 15, 1996 at around 3:00 o'clock in the afternoon, Madelyn Virrey, thirteen-year old daughter of appellant Jose Virrey and Lolita Virrey, was at their house at No. 35, Sta. Isabel St., Villareal Gulod,

Novaliches, Quezon City taking care of her six-month old brother. Thereupon, her father approached her from behind, fondled her breasts, kissed her on the mouth and asked her to remove her panties. Madelyn complied because she was afraid that appellant, who was then drunk, would hit her with a thick piece of wood as he always did when he was drunk. Afterwards, appellant asked her to lie down and she got scared as appellant removed his clothes and went on top of her; kissed her on the lips and made up and down motions with his buttocks when he inserted his penis in her vagina which caused her to feel pain and cry.

"Madelyn did not fight her father as she was afraid of him but she tried evading his kisses on her mouth but he held her hand. She was crying but she did not shout because she was afraid that her father would again hit her while her mother was in the market. Apart from Madelyn, her father, and her six-month old brother, her three (3) other younger brothers aged nine (9) seven (7) and five (5) years old were also inside the house.

"Meanwhile, Madelyn's eleven year-old paternal cousin Angelita Ponce, daughter of appellant's sister, who lived a few streets away at Villareal St., Brgy. Gulod, Novaliches, Quezon City had entered Madelyn's house to invite her cousin to play with her. While she was in the kitchen part of the house which also served as the sala, she heard the voice of appellant from the enclosed portion of the house which served as the bedroom but which did not have a door which caused her to peep inside. Thereupon, she saw appellant who was naked, except for his shorts pulled down to his knees, on top of his daughter Madelyn, kissing her while his hands were on the floor near Madelyn's shoulders. Angelita stood watching her uncle doing it for about a minute but she got nervous and ran away when the wind blew stronger.

"Angelita then left to look for her cousin Tawe and upon seeing him asked him to go with her and show him how 'si kuya Lito (appellant) inaano si Lenlen.' Tawe did not believe Angelita so the latter asked him to go with her to Madelyn's house but when they arrived there, they saw that Madelyn was already feeling pain while she was urinating.

"Thereafter, Angelita told Tawe that they should leave and Tawe told her they should report the matter to their grandmother who was the mother of appellant.

"Angelita then reported the matter to their grandmother who did not believe her but upon Angelita's insistence, she accompanied Angelita and Tawe to the house of appellant and Madelyn. When the three of them arrived at appellant's house, appellant was clad only in his pants while carrying a knife which scared off Angelita and Tawe who both ran back to their grandmother's house. Angelita and Tawe later learned that appellant proceeded to the house of one Mang Amang. Consequently, they returned to the house of Madelyn where the latter and their grandmother were both crying which caused Angelita to also cry.

"Their grandmother then told Angelita to fetch 'Ate Lolit' (Lolita Virrey) Madelyn's mother, at the market at Bayan, Novaliches where she was engaged in vending. Subsequently, Angelita informed Lolita Virrey about what happened and the latter could not believe it but Angelita convinced her to believe and thereafter, Lolita proceeded home where she chanced upon Madelyn outside the house crying. Upon her arrival at her home, Lolita Virrey then asked her crying daughter what had happened and she told her mother that she was raped by her 'Papa'. Afterwards, Lolita went to the Novaliches Police Station where she filed a complaint against appellant.

"The police accompanied Lolita Virrey to her house but appellant, her common law husband, was not there. The police left and searched for appellant who was eventually apprehended by SPO3 Atanacio Quirojica. On the same day, Ferdinand Parinas of the Novaliches Police Station prepared a Request for Laboratory Examination of the person of the victim. On September 16, 1996, Madelyn Virrey and her mother Lolita Besario Virrey executed their separate statements on the incident before PO1 Ferdinand Parinas.

"He first took the statement of Madelyn who told him that she was raped by her father. Madelyn told PO1 Ferdinand Parinas that while she was carrying her youngest brother, her father who was also there touched her breasts and kissed her and ordered her to remove her underwear. Madelyn also told him she was raped by her

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> father. In her sworn statement, Madelyn in reply to the Question No. 10, 'Ilan beses kang ginalaw ng tatay mo?', stated 'Sagot: Tatlong beses na po'. She stated that the three (3) times she mentioned included the incident on September 16, 1996.
>
> "Thereafter, PO1 Parinas took the statement of Lolita Virrey, Madelyn's mother. Subsequently, the police instructed Lolita Virrey to submit her daughter Madelyn for medical examination.
>
> "In accordance with the 'Request for Laboratory Examination dated September 15, 1996,' Dr. Emmanuel Aranas, medico-legal officer of the PNP Crime Laboratory conducted a medical examination on the person of Madelyn Virrey. He conducted a general, extra-genital and genital examination of Madelyn Virrey. The extra-genital examination pertained to the examination of the reproductive system of the subject in reference to the external aspect while the genital examination is specific on the genitals of the subject including the internal examination.
>
> "After conducting the aforesaid physical examination of Madelyn Virrey, Dr. Aranas reduced his findings in writing in the Medico-Legal Report No. N-1765-96. It reads as follows:
> 'There is absence of pubic hair. Labia majora are full, convex and gaping with the pinkish brown, hypetrophied (sic) labia minora presenting in between. On separating(,) the same disclosed an elastic fleshy-type hymen, with shallow healed laceration at 3 o'clock and deep healed laceration at 6 o'clock. External vaginal orifice offers strong resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosites. Cervix is normal in size, color and consistency.'

"Based on said findings, Dr. Aranas concluded that the subject is in a non-virgin state physically and there are no external signs of application of any form of violence. When asked about the lacerations, he replied that the same could have been caused by an erect male sex organ or any hard blunt object that can be accommodated by the hymen.

"During his cross-examination by appellant's counsel, Dr. Aranas stated that the healed lacerations means they were inflicted prior to the examination. On re-direct, Dr. Aranas stated that the lacerations cannot exclude the possibility that there was sexual intercourse with the victim on September 15, 1996." (Citations omitted)

Version of the Defense

On the other hand, appellant's version of the incident was summarized in the Appellant's Brief,[6] as follows:

> "Defense' evidence tends to show that on September 15, 1996, Jose Virrey held the hands of his daughter Madelyn and let her held [sic] his penis. Then he placed his penis between Madelyn's legs. He also kissed his daughter and mashed her breast. When he asked his daughter to hold his penis, the latter and himself were wearing clothes."[7] (Citations omitted)

Ruling of the Trial Court

The court a quo was convinced that Madelyn was telling the truth when she testified that her father approached her from behind, fondled her breasts, kissed her on the mouth, asked her to remove her panties, went on top of her, inserted his penis inside her vagina and made pumping motions. It likewise ruled that appellant's moral ascendancy over Madelyn was sufficient to intimidate her to submit to the carnal act.

Hence, this automatic review.[8]

Assignment of Errors

In his Brief, appellant faults the court a quo with the following alleged error: [9]

> "The trial court gravely erred in convicting the accused-appellant of rape despite failure of the prosecution to

prove his guilt beyond reasonable doubt."

In other words, the main issue in this case is whether the evidence presented by the prosecution sufficiently proves beyond reasonable doubt the crime charged.

The Court's Ruling

The appeal is partially meritorious.

Main Issue:
Sufficiency of Evidence

Appellant faults the court a quo with failure to scrutinize the testimonies of the private complainant and the alleged eyewitnesses. He contends that they are not credible.

As often repeated by this Court, the issue of credibility is a matter best addressed by the trial court which had the chance to observe the demeanor of the witnesses while testifying.[10] For this reason, appellate courts accord great weight and even finality to its factual findings, especially its assessments of the witnesses and their credibility, barring arbitrariness or oversight of some fact or circumstance of weight and substance.[11] At any rate, we have gone over the records but find no sufficient reason to disagree with the court a quo that the testimonies of Madelyn and her cousin are credible. The prosecution has proven beyond reasonable doubt that appellant had carnal knowledge of Madelyn.

The presence of healed lacerations in Madelyn's hymen when she was examined is of no moment. As stated by the medicolegal witness, the presence of such healed lacerations did not exclude the possibility that there was sexual intercourse with the victim on September 15, 1996. This corroborates Madelyn's straightforward and convincing testimony that appellant inserted his penis into her vagina on said date. Anent Madelyn's lack of active resistance, we find no reason to disturb the court a quo's finding that this was due to the appellant's moral ascendancy over his daughter.

The clear and straightforward testimony of Madelyn on how she was raped and on how her father imposed his moral ascendancy is quoted as follows:

"Q.

While you were taking care of your youngest brother, can you recall if there was any incident that happened?

A.

Yes, sir.

Q.

What is this incident?

A.

He approached me from behind.

Q.

To whom are you referring when you said 'he'?

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A.

My papa, ma'am.

Q.

And who is this papa?

A.

Jose, ma'am.

Q.

The same accused whom you earlier identified?

A.

Yes, ma'am.

Q.

When he approached you from behind what did he do if any?

A.

He touched me, ma'am. He fondled my breast.

Q.

With what hand?

A.

His left hand, ma'am.

Q.

Then after? Which of your breast did he fondle?

A.

(Witness pointing to her left breast) This one, ma'am.

Q.

After that what happened next, if any?

A.

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He kissed me, ma'am.

Q.

What part of your body did he kiss?

A.

On the mouth.

Q.

What was his position at the time when he kissed you?

A.

He faced me, ma'am.

Q.

While facing you, he kissed you?

A.

Yes, ma'am.

Q.

Now, after he kissed, what happened next if any?

A.

He asked me to remove my panties, ma'am.

Q.

When he asked you remove your panties, what did you do, if any?

A.

I removed my panties.

Q.

Why?

A.

Because I was afraid of him, ma'am.

Q.

Why were you afraid of him?

A.

Because he was drunk at that time.

Q.

Why, what does the accused do when he is drunk?

A.

He would hit me, ma'am.

Q.

With what object or what would he use in hitting you?

A.

A piece of wood, ma'am.

Q.

What kind of wood?

A.

Thick one, sir.

Q.

How long?

A.

Twenty-six inches.

Q.

By the way, Madam Witness, what did you do when he fondled your breast?

A.

I got scared, ma'am.

Q.

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When you got scared, what did you do?

A.

Nothing, ma'am.

Q.

Why?

A.

Because I was afraid of him.

Q.

Why were you afraid?

A.

Because he would always get drunk and he would always hit us.

Q.

When you removed your panties as you earlier testified, what happened next, if any?

A.

He asked me to lie down.

Q.

Did you lie down?

A.

Yes, ma'am.

Q.

Why?

A.

Because I got scared of him.

Q.

After lying down, what happened next, if any?

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A.

He also removed his clothes, ma'am.

Q.

Now, after removing his clothes, what happened?

A.

He went on top of me, ma'am.

Q.

When he went on top of you, what happened next, if any?

A.

He was kissing me on the lips, ma'am.

Q.

What else aside from kissing you on the lips, what else did he do if any?

A.

He was moving, ma'am.

Q.

What kind of movement was he doing?

A.

He was moving up and down me. (Witness gesturing with her hand in an up and down motion).

Q.

When you say up and down motion, what part of his body was moving on an up-and-down motion?

A.

His b[u]ttocks.

Q.

While he was doing this up and down motion what did you feel, if any?

A.

It was painful, ma'am.

Q.

What part of your body was painful?

A.

My genital, ma'am.

Q.

What caused the pain?

A.

His genital, ma'am.

Q.

Why, where was his genital at that time?

A.

It was in my genital. Vagina.

Q.

So his penis was inside your vagina?

ATTY. MALABO:

That is already leading, your Honor.

COURT:

Private part. You clarify.

FISCAL:

Q.

What do you mean by that?

A.

He inserted.

Q.

What did he insert?

A.

His penis, ma'am.

Q.

Where did he insert his penis?

A.

Into my vagina, ma'am.

Q

And this was during the time when he was making his up and down motion when his buttocks was doing up and down motion?

A.

Yes, ma'am.

Q.

Now, what did you do when you felt pain in your vagina?

A.

I was crying, ma'am.

Q.

Did you fight your father during that time?

A.

No, sir.

Q.

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Why?

A

I was afraid of him, ma'am.

Q.

And why were you afraid of him?

A.

Because he was drunk.

Q.

So what will he do to you if he was drunk?

A.

He would hit me, sir."[12]

Side Issue:
Proper Penalty

The Court, however, does not agree with the penalty imposed by the court a quo upon the appellant. In People v. Brigildo,[13] People v. Tipay,[14] People v. Cula,[15] People v. Licanda,[16] People v. Tabanggay,[17] and People v. Canonigo,[18] the Court had the occasion to discuss the need to prove beyond reasonable doubt the age of the victim in prosecutions for incestuous rape.

Specifically, in People v. Dela Cruz,[19] the Court stressed the following teaching on this point:

> "x x x The burden to prove the minority age of the victim is on the prosecution. As minority age is a qualifying circumstance, it must be proven beyond reasonable doubt. Using this unbending yardstick, the death penalty was not imposed by this Court in cases where there was no evidence at all of the minority age of the victim or where the evidence was weak, unreliable and insufficient."

In People v. Bawang,[20] the death penalty was reduced to reclusion perpetua because "while the offended party averred that she was fourteen years old at the time, she presented no birth certificate to substantiate the averment."

In order to justify the imposition of the death penalty, the prosecution must prove beyond reasonable doubt that the victim was below 18 years of age when the rape was committed. In the present case, the records are bereft of any independent evidence, such as the victim's Certificate of Birth, Baptismal Certificate, or other authentic documents showing Madelyn's age. Though Madelyn's mother testified, her testimony did not show Madelyn's age. The fact that appellant has not denied the allegation in the Complaint that Madelyn was 13 years old when the crime was committed cannot make up for the failure of the prosecution to discharge its burden in this regard. Because of this lapse, as well as the corresponding failure of the trial court to make a categorical finding on the minority of the victim,[21] we hold that the qualifying circumstance of minority required under RA 7659 cannot be appreciated in this case, and accordingly the death penalty cannot be imposed.

Consistent with existing jurisprudence, we award the victim the sum of P50,000 as indemnity ex-delicto in addition to the trial court's grant of moral damages. In line with People v. Catubig,[22] proof of relationship

(father-daughter in this case) can serve as basis for the award of exemplary damages.

WHEREFORE, the appeal is PARTIALLY GRANTED and the assailed Decision MODIFIED. Appellant is found GUILTY of simple rape, and is sentenced to suffer the penalty of reclusion perpetua and to pay the victim P50,000 as indemnity ex delicto, in addition to the trial court's award of moral and exemplary damages. No pronouncement as to costs.

SO ORDERED

Davide, Jr., CJ., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

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[1] Penned by Judge Jose Catral Mendoza.

[2] Assailed Decision, p. 5; rollo, p. 20; records, p. 101.

[3] Records, p.1.

[4] Order dated October 1, 1996; records, p. 15. Atty. Donato Mallabo acted as counsel de oficio.

[5] Appellee's Brief, pp. 3-7, rollo, pp. 63-67. The Brief was signed by Asst. Solicitor General Cecilio O. Estoesta and Solicitor Anna Esperanza R. Solomon.

[6] Appellant's Brief was signed by Atty. Arceli A. Rubin and Atty. Amelia C. Garchitorena, both from the Public Attorney's Office.

[7] Page 3; rollo, p. 36.

[8] This case was deemed submitted for resolution on November 17, 1999 upon the receipt by the clerk of court en banc of the appellant's Reply Brief.

[9] Appellants Brief , p. 3, rollo, p 36. The Appellant's Brief was signed by Atty. Arceli A. Rubin, Atty. Amelia C. Garchitorena and Atty. Elpidio C. Bacuyag, all from the Public Attorney's Office.

[10] People v. Barredo, 329 SCRA 120, March 28, 2000; People v. Tipay, 329 SCRA 52, March 28, 2000.

[11] People v. Tuada, GR. No. 143486, October 18, 2001, citing People v. Perucho, 305 SCRA 770, April 14, 1999.

[12] TSN, December 3, 1996, pp. 5-9.

[13] GR No. 124129, January 28, 2000.

[14] GR No. 131472, March 28, 2000.

[15] GR No. 133146, March 28, 2000.

[16] GR No. 134084, May 4, 2000.

[17] GR No. 130504, June 29, 2000.

[18] GR No. 133649, August 4, 2000.

[19] GR Nos. 131167-68, August 23, 2000, per curiam.

[20] GR No. 13142, October 5, 2000, per Santiago, J.

[21] People v. Cula, 329 SCRA 101, March 28, 2000.

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

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