

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DEOLITO OPTANA, ACCUSED-APPELLANT.

G.R. No. 133922. February 12, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Upon a sworn complaint filed by Maria Rizalina Onciano on November 28, 1995, four (4) Informations for violation of Section 5 of Republic Act No. 7610, or known as the Special Protection of Children Against Child Abuse and four (4) Informations for Rape were filed against herein accused-appellant Deolito Optana committed as follows:

- Criminal Case No. 482-95 for rape:

That on or about the 28[th] day of October, 1995 at Sitio Daan Naugsul, Brgy. Mangan Vaca, in the Municipality of Subic, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, actuated by lust and by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously, have carnal knowledge with his stepdaughter one Rizalina Onsiano, a girl of 13 years old and ten (10) months, against her will and consent, to the damage and prejudice of the latter.

- Criminal Case No. 483-95 for rape:

That on or about and during the month of October 1993, at Sitio Daan Naugsol, Brgy. Mangan Vaca, in the Municipality of Subic, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, actuated by lust and by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously, have carnal knowledge with his stepdaughter one Rizalina Onsiano, a girl of 11 years old and ten (10) months, against her will and consent, to the damage and prejudice of the latter.

- Criminal Case No. 484-95 for rape:

That on or about the month of September, 1995 at Sitio Daan Naugsul, Brgy. Mangan Vaca, in the Municipality of Subic, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, actuated by lust and by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously, have carnal knowledge with his stepdaughter one Rizalina Onsiano, a girl of 13 years old and nine (9) months, against her will and consent, to the damage and prejudice of the latter.

- Criminal Case No. 485-95 for rape:

That on or about and during the month of September 1993, at Sitio Daan Naugsol, Brgy. Mangan Vaca, in the Municipality of Subic, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, actuated by lust and by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously have carnal knowledge with his stepdaughter one Rizalina Onsiano, a girl of 11 years old and nine (9) months, against her will and consent, to the damage and prejudice of the latter.

- Criminal Case No. 486-95 for Viol. Of Sec. 5(b) ART. III of Republic Act 7610 (Child Abuse):

That on or about and during the month of September, 1993, at Sitio Daan Naugsol, Brgy. Mangan Vaca, in the

Municipality of Subic, Province of Zambales, Philippines and within the jurisdiction of this Honorable Court, the said accused with lewd design, and by means of intimidation, coercion, influence and other considetation (sic), did then and there willfully, unlawfully, and feloniously have sexual intercourse with his stepdaughter one Rizalina Onsiano, a minor of 11 years old and nine (9) months, to the damage and prejudice of said Rizalina Onsiano.

- Criminal Case No. 487-95 for Viol. Of Sec. 5(b) Art. III of Republic Act 7610 (Child Abuse):

That on or about the 28[th] day of October, 1995 at Sitio Daan Naugsol, Brgy. Mangan Vaca, in the Municipality of Subic, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused with lewd design, and by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously have sexual intercourse with his stepdaughter one Rizalina Onsiano, a minor of 13 years old and ten (10) months, to the damage and prejudice of said Rizalina Onsiano.

- Criminal Case No. 488-95 for Viol. Of Sec. 5(b) Art. III of Republic Act 7610 (Child Abuse):

That on or about the month of September, 1995 at Sitio Daan Naugsol, Brgy. Mangan Vaca, in the Municipality of Subic, Province of Zambales, Philippines and within the jurisdiction of this Honorable Court, the said accused with lewd design, and by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously have sexual intercourse with his stepdaughter one Rizalina Onsiano.

- Criminal Case No. 489-95 for Viol. Of Sec. 5(b) Art. III of Republic Act 7610 (Child Abuse):

That on or about and during the month of October, 1993 at Sitio Daan Naugsol, Brgy. Mangan Vaca, in the Municipality of Subic, Pronvice (sic) of Zambales, Philippines and within the jurisdiction of this Honorable Court, the said accused with lewd design, and by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously have sexual intercourse with his stepdaughter one Rizalina Onsiano, a minor of 11 years old and ten (10) months, to the damage and prejudice of said Rizalina Onsiano.[1]

Upon arraignment, accused-appellant pleaded not guilty to each of the above informations.

The facts are as follows:

Maria Rizalina Onciano is the daughter of Nida A. Onciano who was born on December 13, 1981 at Tondo General Hospital. The father, Raul Gomez left Nida Onciano even before Maria Rizalina was born.[2]

Nida Onciano met the accused-appellant, Deolito Optana in 1985 at Doris Restaurant in Olongapo City where they were both working.[3] They decided to live together in 1986 without the benefit of marriage even if accused-appellant knew that Nida Onciano already had a daughter. Out of this common-law relationship, the couple had seven children, the eldest being born in 1988 and the youngest, less than a month when the accused-appellant testified in court in June, 1997.[4]

In 1990, the couple moved to Subic and established residence at Sitio Daan Naugsol, Manganvaca, Subic, Zambales with Maria Rizalina and three born children in tow. Maria Rizalina started to go to school at Manggahan Elementary School, Subic, Zambales.

Sometime in September, 1993, Maria Rizalina was playing in the yard with her brothers and sisters when her stepfather called for her to come up to the room. Her mother was out of the house at that time. Upon entering the room, Maria Rizalina was ordered to undress but she refused. The accused-appellant slapped her face twice on her cheeks and threatened to box her.[5] He finally succeeded in removing her clothes. The accused-appellant kissed

Maria Rizalina on the mouth, on her breast, and on her private parts. Thereafter, accused-appellant removed his shorts, held both hands of Maria Rizalina and went on top of her while she was lying on the wooden bed.

Accused-appellant inserted his penis into the vagina of Maria Rizalina. The latter felt pain in her private part and shouted "masakit po." Accused-appellant stayed on top of Maria Rizalina for about ten (10) minutes making "downward and upward movement" or "pumping." Accused-appellant stood up, took a piece of cloth from the bed (pamunas) and wiped the blood in his sex organ. After which, he gave the rag to Maria Rizalina and told her to wipe her private part because there was blood on it. He told her to dress up quickly since Maria Rizalina's mother would arrive shortly. Maria Rizalina did not tell her mother what happened to her because she was afraid of the accused-appellant. She was threatened to be killed once she reports the incident. Maria Rizalina was twelve (12) years old at that time of this fateful day.

On several occasions, whenever Nida Onciano was out of the house since she was busy selling wares in the market, accused-appellant raped Maria Rizalina. The victim could no longer remember how many times she was raped but she particularly recalled that on October 28, 1995, the accused-appellant raped her inside the room where she and her brothers and sisters were sleeping. This was the last time that accused-appellant touched her.[6]

It was on November 24, 1995 when Nida Onciano noticed that Maria Rizalina's tummy was quite protruding while the latter was sleeping on the floor. Maria Rizalina at first refused to answer her mother's inquisitions but finally revealed that the accused-appellant raped her. The next day, Nida Onciano asked her sister, Evelyn Nallos to accompany Maria Rizalina to the doctor to have her examined. At the Olongapo City General Hospital, Dr. Laila Patricio of the Obstetrics and Gynecology Department found Maria Rizalina to be 6-7 months pregnant. Maria Rizalina told her that her stepfather repeatedly raped her. The Medical Report revealed the following:

Medical Certification

November 27, 1995

TO WHOM IT MAY CONCERN:

This is to certify that RIZALINA ONSIANO 14 y/o, of Daangbakal, Daan Naugsog Subic, Zambales was examined and treated/confined in this hospital on/from November 25, 1995 xxx with the following findings and/or diagnosis:

BREAST - Enlarged, areola 3.5 x 3.5 cm, no fissures nor hematoma.

ABDOMEN - FH 21 cm, FHT -/36/ min. RLQ

§ Hymen not intact, vagina admits 2 fingers with ease, Cervix closed, uneffaced, floating cephalic.

§ Pregnancy uterine 6-7 months by size, not in labor.

(SGD.) LAILA S. PATRICIO, M.D.

Attending Physician[7]

After Maria Rizalina's statement was taken at the police station, a formal complaint was filed against the accused-appellant on November 27, 1995. Considering Maria Rizalina's minor age, she was referred to the Municipal Social Welfare and Development Office for assistance. Initial interviews revealed that Maria Rizalina was so confused considering that her mother was pressuring her to withdraw the complaint against the stepfather. It was then recommended that Maria Rizalina be committed to the Department of Social Welfare and Development for protective custody and placed under the care of the Substitute Home for Women in Especially Difficult Circumstances - Saup Lugud Center, San Ignacio Subdivision, Pandan, Angeles City.[8]

On February 23, 1996, Maria Rizalina delivered a baby boy at the "Hospital Ning Angeles" in Angeles City whom she named Richard Onciano. The name of the father was not indicated.

At the Saup Lugud Center, Maria Rizalina manifested signs of depression and violence to the extent of killing herself. She was committed to the National Center for Mental Health for treatment and rehabilitation.

The accused, on the other hand, denied having raped his stepdaughter. He testified that his stepdaughter was always out of the house with her barkadas. In fact, her mother, Nida was always complaining that she spent so much time looking for her. He testified further that Maria Rizalina was always absent from school. He only learned about the complaint for rape filed against him when he was apprehended by the police.

Deolito Optana testified that he met Nida Onciano in 1985 in a restaurant in Olongapo City. He knew that Nida had a daughter but he still courted her and promised to take care of both of them and help support in the education of Maria Rizalina.

Nida Onciano corroborated the accused-appellant's testimony. She did not believe that her common-law husband would rape her daughter because she considered her sexual relationship with him as very satisfactory. She averred that it was her sister, Evelyn Nallos who insisted on pursuing the case against Optana because of an old grudge against them. Evelyn Nallos took care of two of the children of Nida Onciano and Deolito Optana but who died of pneumonia and drowning during a flood. Since the death of the children, her relationship with her sister had been estranged. Evelyn Nallos still wanted to take her other children including Maria Rizalina but she refused.

On March 5, 1998, the RTC rendered a decision, the dispositive portion of which reads:

WHEREFORE, finding the accused Deolito Optana guilty beyond reasonable doubt by direct participation of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code and for violation of Section 5(b) of Republic Act 7610, judgment is rendered in the following manner:

- In Criminal Case No. 485-95 for rape, the accused is sentenced to suffer the penalty of reclusion perpetua with all the accessory penalties attached thereto and to indemnify the minor Ma. Rizalina Onciano the amount of P50,000.00, moral damages in the amount of P100,000.00, and exemplary damages of P100,000.00.

- In Criminal Case No. 487-95, for violation of Section 5 (b) R.A. 7610, the said accused is sentenced to suffer an indeterminate prison term of eight (8) years and one (1) day of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum with all the accessory penalties attached thereto and to indemnify Ma. Rizalina Onciano the amount of P50,000.00, plus moral damages in the amount of P100,000.00 and exemplary damages in the amount of P100,000.00.

- The accused shall support Ma. Rizalina Onciano's child Richard Onciano.

- The accused is acquitted of the crimes charged in Criminal Case Nos. 482-95, 483-95, 484-95, 486-95, 488-95, 489-95, for insufficiency of evidence.

- The accused shall be entitled in full of his preventive imprisonment if he agreed in writing to abide by all the disciplinary rules imposed on convicted prisoners, otherwise to only 4/5 thereof.

- Costs against the accused.

SO ORDERED.[9]

Accused-appellant now comes to this Court with the following assignment of errors:

I

THE APPELLANT'S CONVICTION BY THE TRIAL COURT IS GROUNDED ON FACTS AND ENVIRONMENTAL CIRCUMSTANCES THAT ARE INCONSISTENT AND IMPROBABLE TO HAPPEN, AND THE ACTS CHARGED ARE NOT CLEAR, POSITIVE AND CONVINCING, AND NOT CONSISTENT WITH HUMAN BEHAVIOR AND TITE (SIC) NATURAL COURSE OF THINGS.

II

THE TRIAL COURT FAILED TO CONSIDER AND APPRECIATE THE ILL-MOTIVE AND CONSUMING HATRED OF APPELLANT'S IN-LAWS WHO ORCHESTRATED THE FILING OF THIS CASE, AND WHO WITH UNCUNNY MEASURES PREVENTED THE DEFENSE THE MUCH NEEDED CORROBORATIVE EVIDENCE.

III

THE TRIAL COURT FAILED TO CONSIDER AND APPRECIATE THAT THE ACTUATIONS AND CONDUCT OF THE COMPLAINT AFTER THE INCIDENTS AND DURING THE TRIAL WHEN INTERTWINED WITH OTHER FACTS DOES NOT CONFORM TO THE NORM OF CONDUCT OF PEOPLE WHO ARE INJURED AND RAVAGED.

IV

THE COURT A QUO OVERLOOKED, MISUNDERSTOOD, MISAPPRECIATED AND MISINTERPRETED MATERIAL FACTS OF IMPORTANCE AND SUBSTANCE WHICH IF CONSIDERED AND GIVEN WEIGHT AND PROBATIVE VALUE WILL TILT THE SCALE OF "LADY JUSTICE" IN FAVOR OF ACQUITTAL.[10]

We agree with the trial court's decision .

The victim, Maria Rizalina, first took the witness stand on August 7, 1996. She was, however, observed to be psychologically and emotionally unprepared to testify at that time so the trial court decided to postpone her testimony to a later date after her complete rehabilitation at the National Center for Mental Health.[11] On January 22, 1997, Maria Rizalina was called back to the witness stand. Now very much calm and composed, she gave a recount of her ordeal under her stepfather. She testified as follows:

q Now, Ms. Onsiano, did you go to school sometime in September 1993?

a Yes, sir.

xxx

q What school were you enrolled in 1993?

a Manggahan Elementary School, sir.

q School in 1993?

a Grade IV, sir.

q And who was supporting your education?

a My mother, sir.

q And aside from your mother, who else, if any, was helping your mother in providing your educational expenses?

a Deolito Optana, sir, my stepfather.

q If Deolito Optana is inside the courtroom, will you be able to point him out to the court?

a Yes, sir.

COURT

Point him out.

x x x

a That's him, sir.

xxx

q

Now, how long have you been living with your mother together with your stepfather Deolito Optana at Barangay Mangavaca, Subic, Zambales, prior to September 1993?

a Since I was in Grade 1, sir.

q

Now, in September 1993, do you recall if Deolito Optana was still living with your mother in your house at Mangavaca, Subic, Zambales?

a Yes, sir.

q

Now, do you recall sometime in the afternoon or noontime of September 1993 while you were in your house at Mangavaca, Subic, Zambales, if any unusual incident that happened to you?

xxx

a Yes, sir.

PROS. FLORESTA

q

Could you please tell this Honorable Court what is that unusual incident that happened in your house at Subic sometime in September 1993?

a I was raped, sir.

q By whom?

a By my stepfather, sir.

COURT

q And who is your stepfather?

a Deolito Optana, sir.

q Is Deolito Optana married to your mother?

a No, sir.

q So, he is a live-in partner of your mother?

a Yes, sir.

x x x

PROS FLORESTA

q And how did Deolito Optana raped (sic) you?

a He was forcing me, sir.

q Do you still recall what dress were you wearing at that time?

a No, sir.

q But you have clothes on your body?

a Yes, sir.

q And do you know what did the accused Deolito Optana do with your clothes?

a He was forcing me to undress or to remove my clothes, sir.

q And was he able to make you undress?

a No, sir.

q And when Deolito Optana failed to force you to undress, what did he do, if any?

a He was hurting me, sir.

COURT

q How was he hurting you?

a He was slapping me on my face, and sometimes he would threaten me that he would box me, sir.

x x x

PROS FLORESTA

q And what did you do when Deolito Optana was hurting you by slapping you on your face?

a I was scared, sir.

COURT

q How many times were you slapped on the face?

a Twice, sir.

q And what happened to you wen you were slapped on the face?

a My cheeks were painful, sir.

x x x

PROS FLORESTA

q

And after you were slapped by the accused, what else happened, if any?

a He was forcing me to undress and then, he repeatedly kissed me, sir.

q What part of your body was kissed by the accused?

a My mouth, my breast and my private part, sir.

q And after the accused kissed your private part, what did the accused do, if any?

a And afterwards, he was forcing to insert his penis into my vagina, sir.

q And do you still recall what the accused was wearing at that time?

a Yes, sir.

q Could you please tell us what was he wearing at that time?

a Yes, sir, shorts.

q And what did he do with his shorts?

a He removed his shorts, sir.

q And then after removing his shorts, what did the accused do, if any?

a After removing his shorts and underwear, he held both of my hands and went on top of me, sir.

q And after he was able to move on top of you, what else did he do?

a He repeatedly kissed me and then, he was forcing to insert his penis into my vagina, sir.

COURT

q Was he able to insert his penis into your vagina?

a Yes, sir.

q What did you feel?

a It was painful, sir.

COURT

Continue.

PROS. FLORESTA

q And what did you do when (sic) felt pain in your body after the accused had inserted his penis?

a I shouted, sir.

COURT

q What did you shout?

a I said MASAKIT PO, sir.

q To whom did you address that?

a To the accused, sir.

q You are referring to the accused Deolito Optana?

a Yes, sir.

q Were you alone at that time?

a My brother and sister were there, sir.

q And how many brothers do you have?

a Two, sir.

q Where were they?

a Downstairs, sir.

q How many sisters do you have?

a One, sir.

q Where was she at that time?

a Downstairs, also, sir.

q How about your mother?

a She was not around, sir.

q Where was she?

a She left the house at that time, and I do not know where she went, sir.

q How long did the accused stayed on top of you?

a More or less, ten minutes, sir.

q What did you do during that period when he was on top of you?

a

He was making a downward and upward movement, sir. He was pumping.

xxx

PROS. FLORESTA

q Now, after making those downward and forward movement, what happened?

a At first, he was trembling, sir.

q And then after that, what did the accused do?

a He stood up and he got a PAMUNAS, sir.

COURT

q Why would he have to take a wipe?

a It was because there was blood on his sex, sir.

q How about in your private part?

a Yes, sir, I was having blood in my private part.

q What else did you found (sic) out in your private part?

a It was painful, sir.

q Why was it painful?

a Because of his private part, I sustained a wound in my private part, sir.

xxx

PROS. FLORESTA

q Now, after the accused stood up, and got a piece of cloth and . . .

COURT

q

Was he able to get this piece of cloth?

a Yes, sir.

q Where?

a On the HIGAAN, sir.

q What did he do with this?

a He used it in wiping his face, sir.

q What else did he do?

a

After wiping his face, and gave the piece of cloth to me in order to wipe my vagina, and he told me to do it faster, sir.

xxx

PROS. FLORESTA

q And why did the accused in this case told (sic) you to act faster?

a Because my mother was about to arrive, sir.

q So what did you do when the accused told you to wipe your private part fast?

a I followed him because I was afraid of him, sir.

q And what else did the accused do after you wiped your private part with the cloth he gave to you?

a He instructed me to dress up quickly because my mother would arrive, sir.

q And did you follow him?

a Yes, sir.

q And did your mother arrive home?

a Yes, sir.

q And when your mother arrived home, what did you do?

a

I did not do anything because I was instructed not to tell my mother. So I did not do anything because I was afraid, sir.

COURT

q Why were you afraid (sic) of your stepfather?

a Because he would kill me if I report the incident, sir.

q How did you know?

a Because he told me, sir.

q When was it when he told you that?

a After he raped me, sir.

xxx

PROS. FLORESTA

q

Now, after the accused raped you sometime in September 1993, do you know if this incident was repeated by the accused?

COURT

q Before you go to that. This incident that you have described, where in the house did this happen?

a Upstairs, sir.

q In what room?

a In their room, sir.

q When you said THEY, to whom do you refer?

a My mother, sir.

q You were lying down?

a Yes, sir.

q On what?

a On the bed, sir.

q What kind of bed?

a Wooden bed, sir.

q How many rooms were there upstairs?

a Two, sir.

q The other room is for whom?

a For us, sir, my brothers and sisters.

xxx

PROS. FLORESTA

q After this incident, was there any other incident that happened to you?

a Yes, sir.

q When was that?

a I could no longer recall when but everytime my mother was out, he would do the same thing to me, sir.

q

Could you still recall how many weeks or days have passed from the first incident in September 1993 when the last incident happened?

a I could no longer count because it happened several times, sir.

q And how many times, more (or) less does this incident happened to your?

a Several times, sir.

q Now, in the month of September 1993, do you recall how many times?

a I cannot, sir.

q

Now, you said that everytime that your mother is out, out of the house, your stepfather used to rape you, could you please tell us what is the reason why your mother is always out of your house?

a Sometimes she would go to the market and sometimes she would sell some things, sir.

q Do you know the occupation of your stepfather Deolito Optana in 1993?

a He was a waiter, sir.

xxx

q And in what grade were you at the time this first incident happened?

a Grade IV, sir.

q How old were you then?

a 12 years old, sir.

q What is your birth day?

a 13 December 1981, sir.

q How did you know that your birth is 13 December 1981?

a

From my mother, sir.

xxx

PROS. FLORESTA

q

Now, in 1995, do you still recall if the accused is still living in your house in Manganvaca, Subic, Zambales with you and your mother?

a No more, sir.

q Now, do you know the reason why he was no longer residing in the house of your mother in 1995?

a He was already detained at that time, sir.

xxx

PROS. FLORESTA

q When was the last incident?

WITNESS

a 28 October 1995, sir.

PROS. FLORESTA

q And where did this 28 October 1995 rape happened?

a In our house, sir.

q In the same room upstairs?

a In our room, sir.

COURT

q

You mean in the room where your brothers and sisters were sleeping?

a Yes, sir.

x x x[12]

q

During the last hearing, you testified that after you were first raped by the accused in September, 1993, the accused repeated the act of having raped you. Now could you please tell this honorable court how did the accused raped (sic) you after September, 1993?

a

He was forcing me, sir.

q And how did the accused forced (sic) you . . . to have raped you?

COURT

q He was forcing you to what?

a He was forcing me to undress, sir.

q Where?

a In our house, sir.

q Where in your house?

a In the room, sir.

xxx

PROS. FLORESTA

q Is that the room, the same room, where the first incident took place?

a It happens sometime in our room and sometimes in their room, sir.

q

Could you still recall the month after the first incident that happened to you when the accused forced you to undress inside his room?

a

The incident started in September 1993, but he would always rape me when my mother was out, sir. (GINAGALAW NIYA AKO TUWING WALA ANG MAMA KO.)

q

So, when you say that since September 1993 up to October 28, 1995, the accused had been GINAGALAW you, is that correct, Ms. Onsiano?

a Yes, sir.

q What do you mean by GINAGALAW?

a He was using me, sir.

COURT

q How did he use you?

a

He was forcing his penis into my vagina, sir.

x x x

q

Why did you not report this or why did you report your stepfather, the accused in this case, to anyone of what he did to you?

a I was afraid because he threatened me that he would kill me if I report the matter to anyone, sir.

q But do you remember having reported this incident to your mother?

a Yes, sir, on 24 November 1995. That was the time when I told my mother about the incident.

q And what did your mother do when you reported the matter to her?

a She summoned my Aunt in order to accompany me to the municipal hall to report the matter, sir.

After that, I was investigated by the policeman and then, my stepfather was apprehended, sir.

x x x

q What happened to you when you were raped by your stepfather?

a I was hurt and I got pregnant, sir.

q When did you get pregnant?

a I cannot say what month, sir.

q But what happened to your pregnancy?

a I gave birth to a child, sir.

q

When?

a

23 February 1996. Sir.

q Where?

a At a hospital in Angeles, sir.

x x x

q And what name did you give your child?

a Richard Onsiano, sir.

COURT

Who is the father as appearing in the document?

PROS. FLORESTA

Unknown because this is out of wedlock, your Honor.

q You made the registration of the child with the Office of the Local Civil Registrar of Angeles City?

a The Social Worker, sir.

q

Now, you mentioned awhile ago that when you reported this incident to your mother sometime in November 1995, your mother called for your Aunt Evelyn Nallos?

a Yes, sir.

q For what purpose?

a In order to accompany me to the Municipal Hall, sir.

q And were you and your Aunt Evelyn Nallos able to go to the Municipal Hall?

a Yes, sir.

COURT

q What is the name of the aunt? Evelyn Nallos?

a Yes, your Honor.

q And what did you do at the Municipal Hall?

a A complaint was filed against my stepfather, sir.

q And to whom did you complain?

a Police officer, sir.

q And what did the police officer do when you complained to him?

a Deolito Optana, my stepfather, was apprehended.

x x x

PROS. FLORESTA

q

Could you still recall what month in 1995, prior to 28 October 1995 when you were raped by the accused in this case?

a I could no longer recall the exact date because he has been using me several times, sir.

q

Could you still recall how many times in a month the accused has been using you since September 1993 up to 28 October 1995?

a

Several times, sir. I could no longer count because he would always use me each time my mother was out, sir.

x x x

q Did you have any sexual intercourse with any other men before you gave birth to your child?

a Yes, sir, my stepfather.

q You are referring to the accused?

a

Yes, sir.

q Aside from the accused, was there any other men who had sexual intercourse with you prior to October 1995?

a None, sir, he was the only one.

q Prior to the birth of your child, it was only your stepfather who had sexual intercourse with you?

a Yes, sir.

x x x

q Do you have any boyfriend?

a None, sir.

x x x[13]

Mindful of the well-settled rule that findings of facts of the trial court are accorded great respect considering that the trial judge has observed the demeanor of the witnesses, the Court does not find any cogent reason to depart from such rule. The trial judge had these observations about the witness:

Rizalina was already 14 years old when she testified in Court. At the time she testified she was succinct in her declaration and appeared to the Court to be truthful. She had no reason to fabricate a story against the accused who supported her in her daily needs and spent for her education until she finished Grade 6. Ingratitude is not a trait common to a provincial child still innocent of the vicissitudes of life.[14]

A witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent is a credible witness.[15] Since the trial court found Maria Rizalina's testimony to be credible and trustworthy, it was more than sufficient to sustain the accused-appellant's conviction.[16] The fact that the accused-appellant had carnal knowledge with the young victim is corroborated by the findings of Dr. Laila Patricio, who upon examination on November, 1995 found Maria Rizalina to be 6-7 months pregnant already. Maria Rizalina confided to her that her stepfather raped her.[17] This accusation was repeated when she was investigated by SPO3 Cesar Antolin at the Subic Police Station, Subic, Zambales,[18] and when she was interviewed by Social Welfare Officer II, Ana Ecle of the DSWD, Iba, Zambales.[19]

When the accused-appellant was courting Nida Onciano, he was very aware that she had a daughter. Before they agreed to live together, he was made to understand that he had to accept and treat Maria Rizalina as his own daughter, too-caring for her and providing for her education.[20] Since Maria Rizalina did not have a father, she regarded the accused-appellant as such. Even at her young age, she recognized the parental authority the accused-appellant had over her and in return, she gave the reverence and respect due him as a father. Undeniably, there was moral ascendancy on the part of the accused-appellant over the victim.[21]

In a rape committed by a father against the daughter, the former's moral ascendancy and influence over the latter substitutes for violence and intimidation. The experience has certainly caused great trauma on Maria Rizalina that she had to be committed to the National Center for Mental Health, Mandaluyong City to undergo psychological and medical treatment for severe depression.[22] The testimony of Dr. Dijamco, a psychiatrist at the National Center for Mental Health is quite revealing:

A

After having gathered all the informations we have conceded and collated the data and we have agreed to come up with an impression as stated in the protocol or major depression, sir, and that it was advised that the patient be given medication and to undergo regular psycho therapy, sir.

x x x[23]

Q

Now, in your honest opinion, what could have been the cause of your findings that the patient Rizalina Oniano suffered from major depressive (sic) disorder?

A

After having a thorough study of the patient's case. We could only conclude that it was the abuser and the trauma that she underwent which led to her depression (sic), her major and severe depression (sic), sir.

q

By the way, was she able to disclose to you on your initial interview with the patient Rizalina Onciano regarding the sexual abuse committed in her person?

A

Initially, sir, she had difficulty, she would cry, she would request that we change the topic, however, she was consistent in identifying the perpetrator of the crime, sir, or the accused.

Q

Now, in your honest opinion as a psychiatrist, is it normal for a child not to tell or recall the sexual abuse committed on her person?

A

An abuse is a trauma in itself. So, for a child not to remember is quite impossible. So, abuse especially if these abuses have taken quite a number of times or it happened several times, sir.

Q

But is it normal for a child not to tell the details of the abuse committed in her person?

A

There is a possibility, sir, especially when a threat comes along or for several reasons, sir, but it is possible does not disclose immediately that she has been sexually abused by some other people, sir.

Q

Would you be able to give an example of what other factors that would prevent the child from disclosing or tell the abuse committed on her person?

A

Sir, based on my observations and the cases I have handled for one it would be shame and the guilt since the patient underwent such trauma they feel that they are to be blamed that's why they don't tell, they feel that they have a part in the crime that's why they don't tell. For another reason, an important reason for not disclosing is the threat the perpetrator imposes on the victim. The threat to life, the threat to property, the threat to steal. Basically, those are the major reasons why a child or adolescent would not disclose immediately that she has been sexually molested.

Q

Would you say the influence of the mother for being uncooperative with her in her fighting for her right, is one of the factor that would prevent the child from disclosing?

A

There is a possibility, sir, since whenever a child is abused, it is not the child or the victim which is just affected . It is the entire family, the brothers, the sisters, the mother, the father, the entire family. Since their child is affected, so, the mother and the other relatives may have stayed in the child not disclosing about the attempts or the abuse, sir.

Q

Now, in the case of Rizalina Onsiano, while she was presented by this representation, when this representation was about to ask her of the actual abuse committed on her person, she broke down and refused to talk. Is it normal, is that a normal behavior of Rizalina Onsiano?

A

Basically, prior to the commission of the crime, Rizalina was an up-grown child. Having undergone abuse for quite sometime, it is not easy for one to fully disclose what she underwent. There are times when the patient will be able to identify him just about that. Now, in Rizalina's case, I don't think it was normal. Basically, it is a normal part wherein she would not automatically disclosed what happened. It would take time prior to full disclosure of such trauma, sir.

Q

Now, later on, after she was discharged from the National Center for Mental Health specifically (sic) on January 23, 1997, when Rizalina Onsiano was presented again to testify on the abuse committed against her by the accused, her own stepfather, she was able to narrate the details of what happened to her, is that also normal?

A

That proved, sir, that the therapy, the medication she took or that she underwent at the Center helped her in gradually dealing with the situation as such, sir, whenever she has to testify against her stepfather. The course she is undergoing right now is the effect of the treatment she has undergone at our Center.

x x x[24]

Accused-appellant denies having raped his stepdaughter alleging that it was quite impossible for him to have committed the crime "in broad daylight, in a small house, abundant with open windows and doors, peopled by six or seven mischievous and open-eyed curious souls keen with every unusual scenarios of members involving kins and idols like their fathers." [25]

The Court sees no impossibility for the commission of this abominable act on the victim under the alleged circumstances. Many cases attest to the unfortunate fact that rape can be committed even in places where people congregate: in parks, along the roadside, within school premises and even inside a house where there are occupants. Lust is no respecter of time or place. [26]

Furthermore, accused-appellant points to his sister-in-law, Evelyn Nallos as the person who allegedly pressured his stepdaughter to file the charges of rape against him considering an old grudge existing between the two of them. It can be recalled that Evelyn Nallos took care of two of their children who, unfortunately, died under her care, one died of meningitis and pneumonia and the other by drowning in a flood. To the defense, the deaths were plainly due to Evelyn's negligence. [27] Since then, their relationship was estranged.

This contention deserves scant consideration. Ill motive is never an essential element of a crime. It becomes inconsequential in a case where there are affirmative, nay, categorical declarations towards the accused-appellant's accountability for the felony. [28] Maria Rizalina's straightforward and consistent testimony belies any claim of being pressured by her aunt to concoct a story of defloration against the stepfather. Upon cross examination, she was quick to deny that her Tita Evelyn prompted her to report to the authorities about her physical condition and the person responsible thereof. [29]

To the accused-appellant, it strains credulity why the victim never said anything about the incidents until the discovery by the mother on November 24, 1994 when she revealed that it was her stepfather who was responsible for her pregnancy.

Delay in reporting the crime is understandable. It is not uncommon for young girls to conceal for some time the assaults on their virtue because of the rapist's threat on their lives. [30] The case at bar is no exception to these well-founded rule. Maria Rizalina never said anything to her mother of the many times the accused-appellant had

sexually abused her for fear of her life. She was definitely afraid of her stepfather who threatened to kill her once she reports the matter to her mother.[31]

Neither was there any medical impossibility to the commission of the crime as accused-appellant argues:

Granting "en gratia arguendo" that accused-appellant did the act complained of in September 1993, or the last act on October 28, 1995, it is medically impossible and contrary to the natural laws and religious belief. And, the medical books and hospital records is in dearth or paucity of four (4) months premature births.

x x x

xxx the turning point when the pregnancy became apparent and noticeable was a clear span or interegnum (sic) of one (1) year and five (5) months from the month and year subject matter of this review (November 24, 1995) which logically coincides with the months that complainant gallivanted with the "barkada", but is off-tangent and is irreconcilable and medically and naturally impossible with the alleged commission of rape of September 1993.[32]

This defense is unavailing.

Maria Rizalina gave birth on February 23, 1996. She testified that she was raped several times by her stepfather. While she could hardly remember the exact dates of these instances, she only remembered the first time she was raped which was in September, 1993 when she was only 12 years old and was in Grade IV[33] and the last time was on October 28, 1995. Obviously, she could not have conceived in September, 1993 because as she testified, she was not yet menstruating at that time. She started to have her menstruation when she was in Grade V[34] or in 1994. She denies going home late after school and is not fond of being out with friends.[35] Since she maintained that her stepfather raped her several times, the child was definitely conceived as a result of the rape between September, 1993 and October 28, 1995.

Given all these facts and circumstances, we rule with moral certainty that the accused-appellant is indeed guilty of the crimes.

Accused-appellant was charged for violation of Section 5(b) of R.A. 7610 and Article 335 of the Revised Penal Code for rape which read as follows:

Section 5. Child Prostitution and Other Sexual Abuse. - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

"x x x

"(b)

Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: Provided, that when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period;"[36]

x x x

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

"1.

By using force or intimidation;

"2.

When the woman is deprived of reason or otherwise unconscious; and

"3.

When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

"The crime of rape shall be punished by reclusion perpetua."

x x x

Anent the numerous informations filed, the trial court corrected the erroneous filing of these informations as it explained:

It will be noted, however, that for the same act committed on the same date by the accused on the same offended party, the accused stands charged with two offenses: for violation of Section 5, paragraph (b) of Republic Act 7610 and for rape committed through force and intimidation. Thus: (1) in Criminal Case Nos. 482-95 and 487-95, the accused was charged with rape and violation of Section 5 paragraph (b) of Republic Act 7610, respectively, committed on the same date, October 1995, when the victim was 13 years old and 9 months; (2) in Criminal Case Nos. 484-95 and 488-95, the Informations charged rape and violation of the same special law, respectively, committed on the same date, "September 1995, when the victim was 13 years and 9 months old; (3) in Criminal Case Nos. 483-95 and 489-95, the accused was charged with rape and violation of the same special law, respectively, committed in October 1995 when the child was 11 years and 10 months old; and (4) in Criminal Case Nos. 485-95 and 486-95, the accused was charged with rape and violation of the same special law, respectively, committed in September 1993 when the victim was 11 years and 9 months old.

Charging the accused with two different offenses for the same act committed on the same date against the said victim is erroneous as it is illegal, except where the law itself so allows. Section 5 (b) Republic Act 7610, however, does not so allow. The said law in fact provides that if the child is below 12 years old, the accused must be prosecuted under Article 335 of the Revised Penal Code. Conversely, if the child is above 12 years old but below 18 years old, then the accused must be prosecuted under Republic Act 7610 for the so called "child abuse.[37]

The trial court correctly convicted the accused for Rape under Article 335 of the RPC in Criminal Case No. 485-95 for it was clearly proven that the accused had carnal knowledge with the victim through force and intimidation on that fateful day in September, 1993. This was the first time the accused raped Maria Rizalina who was able to give a detailed account of this traumatic experience. She was below 12 years old at that time. While Maria Rizalina also testified that she was raped several times after September, 1993, the prosecution, however, failed to establish the material details as to the time, place, and manner by which these offenses were committed. There is still a need for proof beyond reasonable doubt that the offenses alleged in the informations were indeed committed.[38] Thus, the trial court acquitted the accused under Criminal Case Nos. 482-95, 483-95, 484-95, 486-95, 488-95, 489-95 for want of sufficient evidence.

Aside from the first incident of rape, all what Maria Rizalina could say was that she was molested by the accused for the last time on October 28, 1995. Whether there was force and intimidation to qualify this incident as rape

was, unfortunately, not proven. Nonetheless, there is no dispute that Maria Rizalina was sexually abused by the accused on this occasion. Hence, the trial court convicted the accused under Criminal Case No. 487-95 for violation of Sec. 5(b) of R.A. 7610 or the Child Abuse Law.

In the case of *People v. Larin*,^[39] the Court has explained that the elements of the offense penalized under this provision are as follows;

- The accused commits the act of sexual intercourse or lascivious conduct.
- The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
- The child, whether male or female, is below 18 years of age.

A child is deemed exploited in prostitution or subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group. Under RA 7610, children are "persons below eighteen years of age or those unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of their age or mental disability or condition."

It must be noted that the law covers not only a situation in which a child is abused for profit, but also one in which a child, through coercion or intimidation, engages in any lascivious conduct. Hence, the foregoing provision penalizes not only child prostitution, the essence of which is profit, but also other forms of sexual abuse of children. This is clear from the deliberations of the Senate.

From the above disquisition, the accused is certainly guilty for sexual abuse committed on his stepdaughter, using his moral ascendancy in intimidating the victim to engage in sexual intercourse with him.

The amount of damages must, however, be modified. In each of the cases, the trial court awarded the amount of P50,000 as civil indemnity, P100,000 for moral damages and another P100,000 as exemplary damages. In line with recent jurisprudence, the award of P50,000 as civil indemnity is in order regardless of proof. In addition to civil indemnity, moral damages may, likewise, be awarded without the need for proving the same in the amount not exceeding P50,000.^[40] The award of exemplary damages must be deleted for lack of legal basis.^[41]

WHEREFORE, the Decision dated March 5, 1998 of the Regional Trial Court, Branch 75, Olongapo City is **AFFIRMED** with the **MODIFICATION** that the accused-appellant is ordered to pay the victim the amount of **FIFTY THOUSAND PESOS (P50,000.000)** as civil indemnify, **FIFTY THOUSAND PESOS (P50,000.00)** as moral damages in Crim. Case No. 485-95 and Crim. Case No. 487-95, the award of exemplary damages is deleted in the above criminal cases.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Pardo, and Ynares-Santiago, JJ., concur.
Puno, J., no part. On official leave.

[1] Decision, pp. 1-3; Records, pp. 287-289; Rollo, pp. 33-35.

[2] TSN, June 19, 1997, p. 40.

[3] TSN, June 5, 1997, p. 27.

[4] TSN, June 19, 1997, p. 39.

[5] TSN, January 22, 1997, p. 5.

- [6] Ibid.
- [7] Records, p. 211.
- [8] Exhibit "D," Records, p. 214.
- [9] Decision, p. 15, Records, p. 301.
- [10] Rollo, p. 66.
- [11] See TSN, August 7, 1996, p. 9.
- [12] TSN, January 22, 1997, pp. 1-14.
- [13] TSN, January 23, 1997, pp. 17-27.
- [14] Decision, pp. 11-12; Rollo, pp. 43-44.
- [15] *People v. Quitlong*, 292 SCRA 360 (1998).
- [16] *People v. Gallo*, 284 SCRA 590 (1998), *People v. Cabebe*, 290 SCRA 543 (1998).
- [17] TSN, August 21, 1996, pp.13-18.
- [18] TSN, September 4, 1996, pp. 6-8.
- [19] Exhibit "D," Records, p. 214.
- [20] TSN, June 5, 1997, p. 28.
- [21] *People v. Vitor*, 245 SCRA 392 (1995).
- [22] See Exhibit "H", Records, pp. 217-226.
- [23] TSN, April 8, 1997, p. 8.
- [24] TSN, April 8, 1997, pp. 9-11.
- [25] Appellant's Brief, Rollo, p. 70.
- [26] *People v. Guibao*, 217 SCRA 64 (1993); *People v. Quinevista, Jr.* 244 SCRA 586 (1997); *People v. Segundo*, 228 SCRA 691 (1993).
- [27] TSN, June 19, 1997, pp. 44-45.
- [28] *People v. Segundo*, 228 SCRA 691 (1993).
- [29] TSN, January 29, 1997, pp. 36-37.
- [30] *People v. Errojo*, 229 SCRA 49 (1994).
- [31] TSN, January 29, 1997, p. 41.
- [32] Rollo, pp. 133-134.
- [33] Ibid.
- [34] *Id.*, at 39.
- [35] TSN, January 29, 1997, p. 39.

[36] Underlining supplied.

[37] Decision, pp. 9, 10 & 11 (Underlining ours).

[38] See *People v. Campuhan y Bello*, G.R. No. 129433, March 30, 2000.

[39] 297 SCRA 309 (1998).

[40] *People v. Larin*, *supra.*; *People v. Prades*, 293 SCRA 411 (1998).

[41] *People v. Acala*, 307 SCRA 330 (1999); *People v. Mengote*, 305 SCRA 380 (1999); *People v. Alba*, 305 SCRA 811 (1999).

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