PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELINO LLANITA Y OPIANA, ACCUSED-APPELLANT.

G.R. No. 134101. September 05, 2001

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PER CURIAM:

The accused denied that he raped CATHERINE. He claimed that he was working at a repair shop where he was employed from seven o'clock in the morning up to five o'clock in the afternoon on the date the alleged rape occured.

On April 22, 1998, the RTC rendered a decision finding the accused guilty beyond reasonable doubt of the crime of rape. The dispositive portion of the decision reads:

> "WHEREFORE, premises considered, the accused, FELINO LLANITA, is sentenced to suffer the penalty of DEATH, for committing the crime of rape of the five-year old Catherine Acol on the 25[th] day of March 1996.
>
> SO ORDERED."[5]

In view of the imposition of the death penalty, the case is now before this Court on automatic review.

In his brief, the accused-appellant assigns the following error committed by the RTC:

> "THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT."[6]

In support of his appeal, the accused-appellant opines that in convicting him, the lower court did not rely on the strength of the prosecution's evidence but on the weakness of his defense. The accused-appellant stresses that it is the burden of the prosecution to prove his guilt beyond reasonable doubt and that he is presumed innocent unless proven otherwise.

The accused-appellant also claims that the testimony of the alleged rape victim, CATHERINE, is unworthy of belief, unnatural and incredible. He points out that although CATHERINE claimed to have been raped on three occasions, she never testified as to the date of any of the rapes, not even for the third rape for which he was charged. Moreover, since CATHERINE testified that she bled during the second alleged rape, her mother would have noticed the blood stains on CATHERINE's underwear and should have already suspected that her child was molested. It is also claimed by the accused-appellant that CATHERINE's testimony contradicts the findings of the medical report as testified to by Dr. Armie Loreta, who stated that she did not find any fresh lacerations when she examined CATHERINE the day following the commission of the alleged rape.

Finally, the accused-appellant claims that the prosecution never presented any competent evidence to prove the allegation in the information that CATHERINE was five (5) years old. Absent such evidence, no conclusion can be made regarding the age of the victim.

After a meticulous review of the case, we resolve to affirm the judgment of conviction.

The accused-appellant's main defense consists of alibi and denial.

The defense of alibi is the weakest of all defenses for it is easy to contrive and difficult to prove.[7] A positive identification of the accused made by an eyewitness prevails over such a defense.[8] Moreover, the denial of the accused-appellant cannot prevail over the categorical testimony of CATHERINE that he raped her. There was no showing that she was motivated to falsely implicate him in the commission of such a heinous crime and the absence of convincing evidence showing any improper motive on the part of the principal witnesses for the prosecution strongly tends to sustain the conclusion that no such improper motive exists, and that their testimonies are worthy of full faith and credit.[9] In her testimony, CATHERINE narrated in detail how she was raped by the accused-appellant and positively identified him as the perpetrator of the rape.

The accused-appellant's attempt to discredit CATHERINE's testimony by claiming that she never mentioned the precise date and time of the commission of the offense and that her mother did not notice blood in her underwear despite her claim that she bled on two of the alleged rapes is unpersuasive.

It has been consistently held that the date of the commission of the rape is not an essential element of the crime.[10] Moreover, the victim was subjected to a medical examination upon written request of the Chief of Police on March 26, 1996 as an alleged victim of rape. As regards the allegation that CATHERINE's mother did not notice any blood on CATHERINE's underwear, this is a mere claim made by the defense and is based merely on conjecture. Nenita Acol herself did not testify. It bears stress that the determination of the competence and credibility of a child to testify rests primarily with the trial judge who sees the witness, notices her manner, her apparent possession or lack of intelligence, as well as her understanding of the obligation of an oath.[11] The findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless the court a quo overlooked substantial facts and circumstances, which if considered, would materially affect the result of the case.[12] The evaluation or assessment made by the trial court acquires greater significance in rape cases because from the nature of the offense, the only evidence that can oftentimes be offered to establish the guilt of the accused is the complainant's testimony.[13] In the present case, we find no cogent basis to disturb the trial court's finding disregarding the testimony of the accused-appellant and upholding the credibility of the complainant CATHERINE who, despite undergoing a rigorous cross-examination, withstood a barrage of questions, stood firm on her assertions and remained unfaltering in her testimony on the unfortunate incident.

The accused-appellant's claim that CATHERINE's testimony is contradicted by the findings of the medical report[14] as testified to by Dr. Armie Soreta-Umil, who stated that she did not find any fresh lacerations when she examined CATHERINE the day following the commission of the alleged rape is also unconvincing. Absence of hymenal lacerations does not disprove sexual abuse especially when the victim is of tender age.[15] To prove rape, it is sufficient to establish that the penis touched the labia of the pudendum of the victim.[16] In the present case, CATHERINE's testimony, where she stated that the accused-appellant inserted his penis into her vagina, is uncontroverted. Dr. Armie Soreta-Umil herself confirmed that there was possibility of penetration of the tip of the male organ into the vagina despite CATHERINE's tender age.[17] Moreover, the medical report in fact corroborates CATHERINE's testimony to the effect that she was previously raped on two occasions by accused-appellant since the medical report reveals that there were "old healed complete hymenal lacerations present" on CATHERINE.

Given that the guilt of the accused-appellant has been proved beyond reasonable doubt, should he be meted the supreme penalty of death despite the failure of the prosecution to present in evidence CATHERINE's birth certificate or other documentary evidence as proof of her age?

We rule affirmatively.

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Article 335, of the Revised Penal Code, as amended by Section 11 of R.A. 7659, insofar as applicable, reads:

> "The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
>
> xxx
>
> 4. when the victim is a religious or a child below seven (7) years old." (Emphasis supplied)

The prosecution is tasked with the burden of proving the age of the victim beyond reasonable doubt in order to appreciate age as a qualifying circumstance.

In the present case, although the only evidence presented by the prosecution to establish that CATHERINE was below seven (7) years old at the time of the commission of the rape was her own testimony, there is no reason to doubt the sufficiency of the said evidence. Her testimony as to her age was never questioned by the accused-appellant in the lower court and remained unrebutted at the trial. And such testimony regarding her age is admissible although hearsay, for she can have no personal knowledge of the date of her birth, as all knowledge as to one's age is acquired from whatever is told by the parents or relatives and such testimony constitutes an assertion of family tradition.[18] It is admissible under Section 40 of Rule 130 of the Rules of Court (Revised Rules on Evidence) which reads:

> "Sec. 40. — Family reputation or tradition regarding pedigree -- The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. xxx"

The above provision contains three requisites for its admissibility, namely: 1.) that there is a controversy in respect to the pedigree of any of the members of a family; 2.) that the reputation or tradition of the pedigree existed previous to the controversy; and 3.) that the witness testifying to the reputation or tradition regarding the pedigree of the person must be a member of the family of said person.[19] The word "pedigree" under Section 39 of the same Rule includes relationship, family genealogy, birth, marriage, death, the dates when and places where these facts occurred and the names of relatives.[20] All three requisites are present in the case at bar.

Admittedly, there have recently been cases where the court applied a more rigid rule requiring that the prosecution present the birth certificate or other documentary evidence when testimonial evidence is insufficient or unreliable to prove the age of the victim. Thus, in People vs. Javier[21], People vs. Tipay[22], and People vs. Cula[23], it was ruled that independent proof other than testimonial evidence is required to prove the victim's age in cases when the age of the victim is alleged to fall within fifteen (15) to eighteen (18) years old. We ratiocinated that "in this age of modernism, there is hardly a difference between a 16-year old girl and an 18-year old one insofar as physical features and attributes are concerned" and that "the crucial years pertain to the ages of fifteen to seventeen where minority may seem dubitable due to one's physical appearance". In People vs. Brigildo[24], the testimonies of the prosecution witnesses respecting the age of the victim were deemed insufficient considering that the records were unclear as to the victim's exact age. The Informations therein alleged that the victim was eleven (11) years old when she was raped yet, when the victim testified a year later, she stated that she was still eleven (11) years old. Moreover, the testimony of her mother was to the effect that the victim was already fifteen (15) years old at the time she was raped. Given that the true age of the victim was put in doubt, the court considered the evidence presented insufficient to prove her age.[25]

This Court has also pronounced that the presentation of the birth certificate or any other official document is no longer necessary to prove minority.[26] Thus, when as in this case, the age of the victim was never put in doubt and was in fact sufficiently established, there is no corresponding obligation on the part of the prosecution to

present other evidence if the testimony of the witness who is competent to testify is sufficient to prove the age of the victim. The presentation of the birth certificate would merely be corroborative of the evidence already presented.[27] In his testimony, the accused-appellant himself, who claimed that CATHERINE was his niece as her mother was his first cousin, admitted that CATHERINE was "five years old last 1996".[28]Had the accused-appellant indeed doubted the age of the victim, he could have presented her birth certificate.[29] We also note that the certified true copy of CATHERINE's birth certificate which was submitted to this Court pursuant to our Resolution dated October 10, 2000 confirms that CATHERINE was born on June 19, 1990 and was thus only five years old at the time she was raped.

Finally, we award CATHERINE the amounts of P75,000.00 as civil indemnity and P50,000.00 as moral damages considering that the crime was committed under circumstances which justify the imposition of the death penalty in accordance with prevailing jurisprudence.[30]

Four justices of the Court maintain that R.A. 7659 is unconstitutional insofar as it prescribes the death penalty; nevertheless they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the appealed decision of the Regional Trial Court finding the accused-appellant FELINO LLANITA y OPIANA, guilty beyond reasonable doubt of the crime of qualified rape is AFFIRMED. The accused-appellant is hereby sentenced to DEATH and is further ordered to pay the victim, Catherine C. Acol, the amounts of P75,000.00 as civil indemnity and P50,000.00 as moral damages.

Upon finality of this decision, let certified true copies thereof as well as the records of this case be forthwith forwarded to the Office of the President for possible exercise of her pardoning power.

No pronouncement as to costs.

SO ORDERED.

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

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[1] Penned by Judge Dolores L. Español.

[2] Rollo, p. 4.

[3] Order dated August 9, 1996; Record, p.14.

[4] TSN, December 9, 1996, pp. 2-13.

[5] Decision, p. 11.

[6] Appellant's Brief, p. 1.

[7] People vs. Abdul, 310 SCRA 246, 254 [1999].

[8] Ibid.

[9] Ibid., 265.

[10] People vs. Carullo, 311 SCRA 680, 691 [1999].

[11] People vs. Garigadi, 317 SCRA 399, 415 [1999].

[12] People vs. Cheng Ho Chua, 305 SCRA 28, 36 [1999].

[13] People vs. Alitagtag, 309 SCRA 325, 335 [1999].

[14] "Findings

GENERAL PHYSICAL EXAMINATION

Height: 101. cms. Weight: 32.5.

Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory subject.

Breasts, infantile. Areolae, light brown, 1.1 cm in diameter. Nipples, light brown flat, 0.2 cm. in diameter.

No extragenital physical injuries noted.

Pubic hair, no growth. Labia majora and minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, short, thin, with old healed complete laceration at 7:00 o'clock position corresponding to the face of a watch, edges rounded, non coaptable. Hymenal orifice measures 1.0 cm in diameter. Vaginal walls and rugosities cannot be reached by the examining finger.

CONCLUSIONS

1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of the examination.

2. Old healed complete hymenal laceration present."

[15] People vs. Ayo, 305 SCRA 543, 549 [1999].

[16] People vs. Campuhan, 329 SCRA 271, 279-282 [2000].

[17] TSN, December 9, 1996 at p. 5

[18] People vs. Velasco, G. R. Nos. 135231-33, February 28, 2001 at p. 19; People vs. Silvano, 309 SCRA 362, 400 [1999].

[19] People vs. Samillano, 207 SCRA 50, 54 [1992]; People vs. Alegado, 201 SCRA 37, 45 [1991].

[20] People vs. Samillano, Supra; People vs. Alegado, Supra, 44.

[21] 311 SCRA 122 [1999].

[22] 329 SCRA 52 [2000].

[23] 329 SCRA 101 [2000].

[24] 323 SCRA 631 [2000].

[25] Ibid., pp. 649-650.

[26] People vs. Velasco, supra at pp. 19-20; People vs. De la Cruz, G. R. Nos. 131167-68, August 23, 2000 at pp. 18-21; People vs. Tipay, Supra; See note 22 at p. 76.

[27] Corroborative evidence is additional evidence of a different kind and character, tending to prove the same point. See Vicente J. Francisco, EVIDENCE (Volume II, Part I, 1997), p. 4.

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[28] TSN, November 3, 1997 at pp. 5-6.

[29] People vs. De La Cruz, supra.

[30] People vs. Torejos, 326 SCRA 75, 89 [2000].

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