

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMELITO BRONDIAL Y CULAWAY, ACCUSED-APPELLANT.

G.R. No. 135517. October 18, 2000

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PER CURIAM:

For review before us is the decision[1] of the Regional Trial Court, Branch 13, Ligao, Albay, finding accused-appellant Emelito Brondial y Culaway guilty beyond reasonable doubt of the crime of rape of his 12-year old daughter, Imelda Brondial, and sentencing him to suffer the penalty of death and to indemnify the victim in the amount of P50,000.00 and to pay the costs.

The information[2] against accused-appellant alleged -

"That in the early morning of June 2, 1997, at Barangay Rawis, Municipality of Libon, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and with grave abuse of his parental authority, did then and there wilfully, unlawfully and feloniously had sexual intercourse with his daughter, Imelda Brondial, a 12-year old girl, against her will and consent, to her damage and prejudice.

"ACTS CONTRARY TO LAW."

When arraigned, accused-appellant pleaded not guilty to the charge, whereupon trial commenced.

The prosecution presented evidence tending to establish the following facts:

Complainant Imelda Brondial, then 12 years old, is the second eldest daughter of accused-appellant Emelito Brondial y Culaway by his wife Beverly Brondial. The couple has five other children, namely, Teresa, Junior, Allan, Jayson, and Loney.[3] On January 15, 1997, accused-appellant's wife, Beverly, went to Manila to work as a laundrywoman. The children were left to the care of accused-appellant, although at times they would stay with accused-appellant's brother, Abad Brondial, and the latter's family.[4]

In the evening of June 2, 1997, Imelda and her siblings slept on the floor beside their father accused-appellant, in their house in Rawis, Libon, Albay. Imelda lay near the wall of the house. To her left was Junior, followed by Loney, Allan, Jayson, and Teresa, the eldest. Accused-appellant slept near the door. Imelda was awakened when accused-appellant removed her short pants and underwear and lay on top of her. Imelda felt some pain as accused-appellant inserted his penis into her vagina. She shouted and cried but her siblings, who were awakened, could do nothing to stop their father in abusing her.[5]

Early the following day, while accused-appellant was still asleep, Imelda and her younger sister Loney left their house and decided to go to the house of their uncle Abad (Abad Brondial) in Cabugao, Pantao, Libon, Albay. As they did not know the exact location of their uncle's house, they waited for students of the school in Pantao to be dismissed from class and walked with them to go to Cabugao. Imelda and Loney reached their uncle's house at about 3:00 p.m. Imelda related her ordeal to Abad and his wife, Conching, who lost no time in taking Imelda to the Philippine National Police Crime Laboratory at Camp General Simeon A. Ola in Legazpi City for medical

examination.[6]

On June 9, 1997 Imelda, assisted by her uncle Abad, filed a criminal complaint (Exh. A)[7] for rape against accused-appellant before the 6th Municipal Circuit Trial Court of Polangui-Libon, Albay.

Dr. Lilli-Melrose Pantua Camara, a police senior inspector and a medico-legal officer, conducted the examination on Imelda and her report (Exh. C)[8] yielded the following results:

"FINDINGS:

GENERAL AND EXTRAGENITAL

Fairly developed, fairly nourished and coherent female child subject. Breasts are underdeveloped, slightly protruding. Abdomen is flat and tight.

GENITAL

Pubic hair is absent. Labia majora are full, convex and slightly gaping, with pinkish labia minora presenting in between. On separating the same is observed an elastic, fleshly-type hymen with deep, healed laceration at 6 o'clock and shallow healed laceration at 3 o'clock. External vaginal orifice offers slight resistance to the introduction of the examining index finger. Vaginal canal is narrow with slightly shallow rugosities.

CONCLUSION:

There are no external signs of recent applications of any form of trauma.

Subject is in non-virgin [state] physically.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and spermatozoa."

Dr. Camara testified that the lacerations in the hymen could have been caused by a blunt object or a man's penis. Based on her impression of the hymenal lacerations, she estimated that sexual intercourse could have taken place about a week prior to Imelda's examination.[9]

Accused-appellant testified in his own behalf. He admitted that he is the father of the complainant Imelda Brondial and that Abad Brondial is his brother. He said he had nine children by his wife, but only six were living. Of the six, only Junior, Allan, and Jayson were living with him because Imelda and Loney were staying with his brother Abad, while Teresa was staying in Polangui. His wife Beverly had been staying in Manila since March 26, 1997, working as a laundrywoman.

Accused-appellant denied that he committed the crime and claimed that he was in his house in Rawis, Libon, Albay on June 2, 1997, the date of the commission of the crime. He averred that he could not have raped Imelda on the night of June 2, 1997 because Imelda was then in the custody of her uncle Abad in Cabugao, Pantao, Libon, Albay, about five kilometers away from where he was, the distance of which could be covered only by motorboat in about half an hour. According to accused-appellant, Imelda had been staying with Abad since she was four years old. Abad had agreed to spend for Imelda's schooling. Accused-appellant said that from the time Imelda was taken away from him by Abad, Imelda never visited him.[10]

Accused-appellant declared that Abad was quite mischievous with women. He was once hit on the face by Melita Quideng, the reason he has a scar on his left cheek. He claimed that he and Abad had a misunderstanding over a two-hectare land in Rawis which their father owned. Abad allegedly sought to deprive accused-appellant of the produce despite the fact that it was accused-appellant and their father who cultivated the land. He surmised that Abad had instigated Imelda to file the case against him so that Abad could have the land and its produce.[11]

On August 27, 1998, the trial court rendered a decision finding accused-appellant guilty of raping Imelda. The dispositive portion of its decision reads:[12]

"WHEREFORE, in view of the foregoing consideration and finding the accused Emelito Brondial y Culaway guilty beyond any reasonable doubt of the crime of rape against his 12-year old daughter Imelda Brondial, [accused is sentenced] to suffer the penalty of DEATH and to indemnify the offended party the amount of P50,000.00, and to pay the cost.

"Pursuant to the constitutional provision for automatic review, the records of this case, together with all the exhibits and stenographic notes, are hereby ordered immediately elevated to the Supreme Court."

"SO ORDERED."

Accused-appellant seeks reversal of his conviction on the ground that his guilt was not proved beyond reasonable doubt.

In prosecutions for rape, this Court has been guided by the following principles in its review of trial court decisions: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and (3) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.[13]

In rape cases, the accused may be convicted solely on the testimony of the rape victim if her testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. For, by its very nature, rape is committed with the least possibility of being seen by the public. In fact, the presence of an eyewitness, other than the victim, could even raise serious doubts of its commission.[14]

In this regard, our review of the evidence adduced by both parties confirms the finding of the trial court that accused-appellant is guilty of sexually abusing complainant Imelda. The trial court had the opportunity to observe complainant's demeanor, particularly her scorn and outrage against her own father, and it gave full credence to her testimony.[15] The trial court's appreciation of the evidence will not be disturbed on appeal unless there is good reason for doing otherwise. Accused-appellant failed to adduce evidence that the trial court misappreciated the evidence.[16] Imelda told the court in a categorical and straightforward manner how she was violated by her very own father, thus:

"PROSECUTOR:

Q You said you are only 12 years old?

A Yes, sir.

Q Now, while sleeping, was there any unusual incident that happened?

A Yes.

Q What was that unusual incident that happened?

A Papa undressed me.

Q As you said your father undressed you, what did he undress from you?

A My panty and short pants.

Q After your father removed your short pants and panty, what did your father do?

A He also undressed himself.

Q What did he undress himself?

A His pants and his brief.

Q After undressing, he removed his pants and brief, what did your father do?

A He [lay] on top of me.

Q And after lying on top of you, what did he do?

A He had sex with me.

Q What do you mean your father had sex with you?

COURT:

I think that is already understood.

PROSECUTOR:

Q Now, what did you feel when your father had sexual intercourse with you?

A Painful.

Q And when you felt pain, what did you do?

A I shouted.

Q After you shouted, what happened next?

A I cried.

Q Now, aside from shouting and crying, what did you do, if any?

A The following morning, I ran away.

Q Were you alone when you ran away?

A I was with Loney.

Q Is Loney a boy or a girl?

A A girl.

xxx

xxx

xxx

xxx

Q

After arriving, what did you do, if any?

A

I told him what happened.

Q

Exactly, what did you tell your Pay Abad?

A

About my father [who] had sex with me.

Q

What did your Pay Abad do when he received your information that you were sexually abused by your father?

A

We went to Pantao.

Q

Who was with you when you went to Pantao?

A

May Consing and Pay Abad.

Q

Why did you go to Pantao?

A

To have me medically examined.

Q

Were you medically examined in Pantao?

A

There was no doctor there during that time.

Q

And when you and your Pay Abad and May Consing found [out] that there was no doctor there, what did you do?

A

We went to Libon.

Q

Where in Libon?

A

In Libon.

Q

What was your purpose in going to Libon?

A

In order to submit myself for examination.

Q

Were you medically examined in Libon?

A

Yes, sir.

xxx

xxx

xxx

xxx

COURT:

The court has some questions to ask.

Q

After your father [lay] on top of you, what did your father do [to] you as he [lay] on top of you?

A

He had sex with me."[17]

When the testimony of a rape victim is simple and straightforward, unshaken even by rigorous cross-examination and unflawed by any inconsistency or contradiction, the same must be given full faith and credit.[18] If Imelda had concocted her story, she would not have remained consistent throughout her entire testimony in the face of intense and lengthy interrogation.[19] On cross-examination, she testified:

"ATTY. ROA:

Q

On June 2, 1997, when you said in the evening which your father [lay] on top of you, you were still staying with your Pay Abad?

A

No, in our house.

xxx

xxx

xxx

xxx

WITNESS:

I did not return back any more.

COURT:

It is not there. The witness actually refers after the incident. The court wants to find out. Alright, is it true that when you were still four (4) years old, you were already staying with your Pay Abad at Cabugao?

WITNESS:

I was taken back by my father again.

COURT:

When were you taken back by your father?

WITNESS:

When I was already big.

ATTY. ROA:

Q

So, even before June 2 or 3, 1997, you already knew the house of your Pay Abad in Cabugao?

A Yes, ma'am.

Q

And even if without the pupil whom according to you you waited for, you can find your Pay Abad's house?

A

I cannot.

xxx

xxx

xxx

xxx

ATTY. ROA:

Q Imelda, please tell us the truth, was it your father who [lay] on top of you or your Pay Abad?

PROSECUTOR:

We object. There is no statement to the effect that this Pay Abad. ...

COURT:

The court will allow the question.

WITNESS:

Papa.

ATTY. ROA:

Who told you that it was your Papa or your father who [lay] on top of you? Or did anyone tell you to file this case against your father, if any?

A Yes,ma'am.

Q Who?

A Pay Abad.

Q

And it was also your Pay Abad who told you or taught you what to say in this case?

PROSECUTOR:

Already answered.

COURT:

Sustained.

ATTY. ROA:

Do you know if your father would be found guilty, your father might be given a death sentence and he will be killed? Would you still insist on your testimony?

A

Yes, ma'am.

ATTY. ROA:

That is all with the witness."[20]

When recalled to the stand, she affirmed that she was violated by accused-appellant and expressed her loss of respect and affection towards him.

"PROSECUTOR:

One rebuttal.

INTERPRETER:

Witness Imelda Brondial will testify under the same oath as a rebuttal witness.

PROSECUTOR:

The purpose of the testimony of this witness is to rebut the allegations of the accused.

With leave of Court?

DIRECT EXAMINATION

PROSECUTOR:

Q

Accused Emelito Brondial testified that on June 2, 1997, you were not in Rawis, Libon, Albay, what can you say as to that allegation? To be more precise, you were not in your house in Rawis, Libon, Albay?

WITNESS:

A I was in Rawis.

Q

Now, your father Emelito Brondial likewise testified that on June 2, 1997, you were allegedly living with your uncle Abad Brondial, what can you say as to that allegation?

A No.

Q

Before the incident happened, meaning, before June 2, 1997, did you ever have any occasion to live with your uncle Abad Brondial?

A No.

Q Do you still love your father, the accused in this case?

A No more.

Q Why?

A Because he did something wrong.

Q What do you mean when you say your father did something wrong to you?

A He undressed me.

Q After which?

A He made sexual intercourse with me.

Q Before your father did that thing to you which you called wrong, did you love your father as a father before?

A Yes, sir.

Q And after he did that thing to you which you already described?

COURT:

Already answered.

PROSECUTOR:

No more questions.

COURT:

Cross?

ATTY. ROA:

With leave of this Honorable Court?

CROSS-EXAMINATION

ATTY. ROA:

Q

Imelda, is it not a fact since you were four (4) years old, you had already been staying with your uncle Abad?

WITNESS:

A No, I stayed in Rawis.

XXX

XXX

XXX

XXX

ATTY. ROA:

Q

When you were still a baby or when you were already able to walk, you stayed with your Pay Abad?

WITNESS:

A

I was already able to walk.

Q

From that moment, you grew up with your Pay Abad?

A

Yes, ma'am.

Q

And you were treated by your Pay Abad and his wife as their daughter?

A

Yes, ma'am.

Q Does your Pay Abad and his wife have any children?

A

In Manila.

Q

Since you grew up with your Pay Abad, you love him as your father, you treated him as your father?

A

Yes, sir.

Q

And you never really love Emelito as your father?

A

When he has not yet done something to me, I still love him.

Q

Is it not a fact that even before June 2, you did not even respect him, you did not kiss his hand?

A

No.

Q

And you had been staying with your Pay Abad since the time that he took you as his child up to the present?

A

When Papa did something to me, I went to the place of Pay Abad.

Q

Why, did you go home to your father's house in Rawis?

A

Yes, ma'am.

Q

Where was your mother then when you went home to Rawis?

A

In Manila.

Q

Is it not a fact you said a while ago that you never really love your father, you never respect him and you never kiss his hand?

COURT:

Misleading. She loved her father before he did something but she did not kiss."[21]

It may be noted that while the information alleges that the rape took place "in the early morning of June 2, 1997," the prosecution evidence shows that it occurred "in the evening of June 2, 1997." Such discrepancy, however, is insignificant and does not diminish the quantum of proof established by the prosecution. The precise time of the commission of the crime is not an essential element of rape. Even a variance of a few months between the time set out in the indictment and that established by the evidence during trial has been held not to constitute such a serious error as to warrant the reversal of a conviction solely on that score.[22] Moreover, the record does not show that accused-appellant objected to the time of the commission of the rape.

Accused-appellant points out alleged inconsistencies in the evidence of the prosecution.

First. Accused-appellant makes much of the fact that when Imelda shouted and cried while being raped by accused-appellant, her brothers and sisters did nothing to help her despite the fact that they had been awakened. He argues that there was no evidence showing that he intimidated and silenced them.

Where resistance would be futile in a rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter sufficiently takes the place of violence or intimidation. That ascendancy or influence flows from the father's parental authority over his children and from the latter's correlative duty to obey and observe reverence and respect towards the former.[23] The force of such authority and its hold on young minds cannot be underestimated. Children trained to obedience are not likely to have the courage to protest against anything done to them the first time it is committed. It is not therefore surprising for the children to just freeze in fear when they realized what was being done to Imelda.

Second. Accused-appellant contends that if, as Imelda claimed, she and her sister Loney left the house in the morning to go to Abad's house, they should have arrived there before noon and not at 3:00 p.m. As Imelda explained, however, she and her sister did not know how to get to Cabugao where Abad lived. They had to wait until the students, who were from Cabugao, were dismissed from school and then they followed them in going to Cabugao. Thus, they were able to reach the place of Abad only in the afternoon. Imelda testified:

"PROSECUTOR:

Q Now, where were your father when you and Loney ran away?

A In the house sleeping.

Q That was in the early morning of June 3, 1997?

A Yes, sir.

Q Where did you proceed?

A To Pay Abad.

Q Who is this Pay Abad?

A The brother of my father.

Q The one who testified yesterday?

A Yes, sir.

Q If he is in court, will you please point to him, your Pay Abad?

A Yes.

Q Will you please point to him?

INTERPRETER:

Witness pointed to a man who is seated beyond and who, upon asked, answered to the name Abad Brondial.

PROSECUTOR:

What time did you arrive in the house of your Pay Abad?

A In the afternoon.

Q Where was...why, where is your Pay Abad living?

A Cabugao, Pantao.

Q Libon, Albay?

A Yes, sir.

COURT:

What time did you leave your house in Rawis?

A We do not have a clock.

Q More or less, 8:00 in the morning, before lunch, after breakfast?

A Late in the morning.

COURT:

Proceed. Your question is early in the morning. You have to establish that to the testimony of the witness. Actually, the court was surprised that she arrived in the afternoon, because she left early in the morning. The question is quite leading. So, she left in the morning.

PROSECUTOR:

Q

What means of transportation did you use in going to Cabugao, Pantao, Libon, Albay.

A

I waited for the pupils.

Q

You are talking about pupils, pupils of what school?

A

Pantao.

Q

Before going to that pupil in Pantao, what means of transportation did you use when you went to Pantao from your house in Rawis?

A

We just walk.

Q

Do you know the distance of Rawis to Cabugao, Pantao, Libon, Albay?

A

Far.

Q

Now, you said that when you arrived in Pantao, you waited for the pupils. Why did you wait for the pupils?

A

Because I do not know the house of Pay Abad.

Q

Were you able to wait for the pupils?

A

Yes, sir.

Q

After waiting for the pupils, what did you do?

A

I went with them.

Q

You went with them to Cabugao?

A

Yes, sir.

Q

Were you able to reach the house of your Pay Abad in Cabugao?

A

Yes, sir.

Q

When you reached the house of your Pay Abad, was he around when you arrived?

A

Yes, sir.

Q

Was he alone?

A

May Consing was there.

Q

Your May Consing, what is she to your Pay Abad?

A

The wife."[24] Imelda's testimony was corroborated by Abad Brondial who testified that Imelda and her sister Loney arrived in his house while he and his wife were having merienda. Imelda reported to them that she had been raped by accused-appellant. Abad Brondial said:

"Q

On June 3, 1997 at about 3:00 in the afternoon, where were you?

A

I was in my house.

Q

Where is your house situated?

A

In Cabugao.

Q

Cabugao is only a sitio, of what barangay does it belong?

A

Pantao.

Q

Municipality of what?

A

Libon, Albay.

Q

What were you doing in your house at [that] time?

A

I was taking my merienda.

Q

.Were you alone when you were taking your merienda?

A

I was with my wife.

Q

At about that time, did you have a visitor that arrived?

ATTY. ROA:

Leading

COURT:

Allowed.

WITNESS:

Imelda arrived while we were taking our merienda.

PROSECUTOR:

When you mentioned the name Imelda, you are referring to your niece, Imelda Brondial?

A Yes, sir.

Q Was she alone when she arrived in your house?

A She was with her sister.

Q How many companions did Imelda have?

A Only the two of them.

Q Now, when they arrived, did you ask them their purpose in going to your house?

ATTY. ROA:

Leading.

COURT:

Sustained.

PROSECUTOR:

Q

When Imelda and her sister arrived, what happened?

A

First, I invited them to partake their merienda and after they were through, I asked them as to their purpose in going to our house.

Q

To whom in particular did you ask as to their purpose in going to your house?

A Imelda.

Q

And what did Imelda Brondial tell you, if any?

A

After asking Imelda, she told me that 'Pay Abad, Papa abused me.' After that, I asked Imelda 'what do you mean by abused'? Then she said, 'he slept with me.'

Q

Now, what else did you ask from Imelda, if any?

A

When she said that, I then asked her 'what do you mean by he slept with you (inulod), what did he do to you?'

Q

What did Imelda Brondial answer?

A

According to Imelda, he had sexual intercourse with her.

Q

Incidentally, you mentioned that Emelito Brondial, the accused in this case, is your brother. If he is in court, will you please point him? .

A

Yes, sir. That man

INTERPRETER:

Witness is pointing from where he is sitted to a man sitting on the first bench and who upon asked, answered to the name Emelito Brondial.

PROSECUTOR:

Upon learning that Imelda Brondial was sexually abused by your brother, Emelito Brondial, the accused in this case, what did you do?

A In order for me to believe, I had her medically examined."[25]

Third. Accused-appellant claims that he has been framed. He claims that he is not in speaking terms with his brother Abad and insinuates that the filing of the criminal complaint for rape against him was prompted by their dispute over the two-hectare land which their father owned.

This was denied by Abad Brondial. Abad said he and accused-appellant had been in good terms. They ceased to communicate only after the criminal complaint for rape had been lodged before the court. When Abad informed Imelda's mother Beverly Brondial about the incident, she was outraged.[26] Imelda testified on rebuttal that she lost her love and affection for accused-appellant after he defiled her.[27] To reiterate, we find the testimony of Imelda credible. She had no motive to testify falsely against her own father.[28] On the other hand, she was aware that a prosecution for rape would inevitably expose her to public scrutiny. As we have said many times, no woman would want to go through the humiliation of a trial unless she has actually been so brutalized that she desires justice for her suffering.[29] It takes a certain amount of psychological depravity for a young woman to concoct a story which could cause the life of her own father and drag the rest of the family, including herself, to a lifetime of shame.[30] Imelda's mother would not allow her child to be exposed to public trial, if the charges she makes are not true.[31] When asked how she felt upon learning that it was her husband who molested her daughter Imelda, Beverly testified that she was furious.[32]

Neither can we detect any ill motive on the part of Abad in accompanying Imelda for her medical examination, taking custody over her after the rape incident, and supporting her throughout the trial of the case and even testifying for the prosecution. Nor can we surmise that Imelda would willingly allow herself to be used as an instrument for Abad to exact vendetta against accused-appellant over a parcel of land owned by their father.

Fourth. Accused-appellant insists that the medical finding that there were "no external signs of recent application of any form of trauma" negates the fact of sexual abuse upon Imelda.

Such conclusion is inaccurate. Imelda's positive testimony, coupled with the findings of a deep healed laceration at 6 o'clock and a shallow healed laceration at 3 o'clock on complainant's labia majora, confirms the sexual intercourse. It is settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[33] Laceration, whether healed or fresh, are the best physical evidence of forcible defloration.[34] On the other hand, the absence of spermatozoa in the genitalia of complainant does not negate the finding of rape since ejaculation is not an element thereof.[35] What consummates the felony is the contact of the penis of the perpetrator, however slight, to the vagina of his victim without her consent.[36] In fact, a medical examination is not a requisite for a rape charge to prosper as long as the victim categorically and consistently declares that she has been raped.[37]

Accused-appellant used threat and intimidation to overcome Imelda's will and break her resistance. Thus, the fact that no external physical injury was noted on Imelda does not negate the fact that she was raped. Intimidation would also explain why there are no traces of struggle which would indicate that the victim fought off her attacker.[38] Indeed, the law does not even impose a burden of proving resistance on the part of the rape victim.[39]

Fifth. Accused-appellant contends that, since Imelda had been living in the house of her uncle Abad for quite some time prior to the rape incident and was not used to staying in his house, she could have mistaken him for someone else as the kerosene lamp was unlighted on that night.

Accused-appellant's bare and uncorroborated denial of the crime charged is insufficient to refute the prosecution evidence, especially in the face of his positive identification by complainant.[40] No daughter can possibly be mistaken about the identity of her father who forces himself on her in the presence of her other siblings, there being no evidence that there were other adult male occupants who could have gained unlawful entry into the house.[41] Denial is a negative self-serving evidence which cannot be given greater weight than the testimony of credible witnesses who testified affirmatively. Between the positive declarations of prosecution witnesses and the negative statements of the accused, the former deserves more credence.[42]

Finally, the trial court found accused-appellant guilty of raping her daughter Imelda and sentenced him to suffer the penalty of death and to indemnify her in the amount of P50,000.00 plus costs.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, provides:

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

"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."

The information alleged that accused-appellant had sexual intercourse with his daughter, Imelda Brondial, then 12 years old. The evidence clearly shows Imelda's age and filiation to accused-appellant. The prosecution presented the marriage contract (Exh. G) between accused-appellant and Beverly P. Sandigan (Imelda's mother), which stated that their marriage was duly solemnized on November 25, 1981 by Fr. Manuel B. Balute. Six children were born to the couple, namely, Teresa, complainant Imelda, Junior, Allan, Jayson, and Loney. Per her Certificate of Live Birth (Exh. H), Imelda, having been born on May 12, 1985, was 12 years old when she was raped. Imelda testified that she was 12 years old when she was sexually abused by her own father, accused-appellant, and this fact was corroborated by her mother, Beverly Brondial.[43] Accused-appellant even admitted his paternity in open court and the fact of Imelda's minority at the time of the commission of the rape.

The concurrence of minority of the complainant and her relationship to the offender, having been alleged in the information and duly proved with certainty and clearness as the crime itself during trial, constrains the Court to affirm the conviction of accused-appellant of qualified rape, justifying the imposition of the death penalty on him. Four (4) members of the Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray*[44] that R.A. No. 7659, insofar as it prescribes the penalty of death, is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

As to the civil liability of accused-appellant, the Court finds that the award of P50,000.00 for civil indemnity should be increased to P75,000.00, consistent with recent rulings,[45] that if the crime of rape is qualified by circumstances which warrant the imposition of the death penalty by applicable amendatory laws, the complainant should be awarded P75,000.00 as civil indemnity. In addition, moral damages in the amount of P50,000.00 must be awarded without need of proof for it is assumed that the victim has suffered moral injuries entitling her to such an award.[46]

WHEREFORE, the decision of the Regional Trial Court, Branch 13, Ligao, Albay, finding accused-appellant Emelito Brondial y Culaway guilty beyond reasonable doubt of the crime of rape and imposing upon him the penalty of death, is **AFFIRMED** with the **MODIFICATION** that accused-appellant is ordered to pay complainant Imelda Brondial P75,000.00, as civil indemnity, and, in addition, P50,000.00 as moral damages.

In accordance with Section 25 of R.A. No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President in case he decides to exercise his prerogative of mercy.

SO ORDERED.

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

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- [1] Per Judge Jose S. Sañez.
- [2] Rollo, p. 8.
- [3] Also referred to as Nonie in the records.
- [4] TSN (Beverly Brondial), March 5, 1998, pp. 15-20.
- [5] TSN (Imelda Brondial), February 11, 1998, pp. 2-6; Sworn statement of Imelda S. Brondial dated October 10, 1997, RTC Records, pp. 17-18.
- [6] TSN (Imelda Brondial), February 11, 1998, pp. 6-11; TSN (Abad Brondial), February 10, 1998, pp. 2-6; Sworn statement of Abad Brondial dated June 5, 1997 (Exh. B), RTC Records, p. 6.
- [7] RTC Records, p. 1.
- [8] Id., p. 108.
- [9] TSN, March 3, 1998, pp. 3, 9-12, 14.
- [10] TSN, March 10, 1998, pp. 5-9.
- [11] Id., pp. 9-10; TSN, March 31, 1998, pp. 3-12.
- [12] Rollo, p. 26.
- [13] People vs. Baniguid, G.R. No. 137714, September 8, 2000; People vs. Baygar, G.R. No. 132238, November 17, 1999; People vs. Sta. Ana, 291 SCRA 188 (1998); People vs. Auxtero, 289 SCRA 75 (1998); People vs. Balmoria, 287 SCRA 687 (1998); People vs. Barrientos, 285 SCRA 221 (1998); People vs. Gallo, 284 SCRA 590 (1998).
- [14] People vs. Medina, 300 SCRA 98 (1998).
- [15] People vs. Dizon, 309 SCRA 669 (1999).
- [16] People vs. Lim, 312 SCRA 550 (1999).
- [17] TSN, February 11, 1998, pp. 5-6, 8-9, 11.
- [18] People vs. Mosqueda, 313 SCRA 694 (1999).
- [19] People vs. Perez, 296 SCRA 17 (1998).
- [20] TSN, February 11, 1998, pp. 12, 14-15, 16-17.
- [21] TSN, July 15, 1998, pp. 3-5, 6-7.
- [22] People vs. Bernaldez, 294 SCRA 317 (1998).
- [23] People vs. Gianan, G.R. Nos. 135288-93, September 15, 2000; People vs. Bernaldez, G.R. Nos. 132779-82, January 19, 2000; People vs. Panique, G.R. No. 125763, October 13, 1999; People vs. Lim, supra; People vs. Bartolome, 296 SCRA 615 (1998); People vs. Balmoria, supra; People vs. Garcia, 281 SCRA 463 (1997); People vs. Matrimonio, 215 SCRA 613 (1992).
- [24] TSN, February 11, 1998, pp. 6-8.
- [25] TSN, February 10, 1998, pp. 3-5.

- [26] TSN, February 10, 1998, p. 8.
- [27] TSN, July 15, 1998, pp. 4-7.
- [28] *People vs. Igat*, 291 SCRA 100 (1998).
- [29] *People vs. Sancha*, G.R. Nos. 131818-19, February 3, 2000; *People vs. Lopez*, 302 SCRA 696 (1999).
- [30] *People vs. Sangil, Jr.*, 276 SCRA 532 (1997).
- [31] *People vs. Tumala, Jr.*, 284 SCRA 436 (1998).
- [32] TSN, March 5, 1998, p. 18.
- [33] *People vs. Rosales*, 313 SCRA 757 (1999).
- [34] *People vs. Acala*, 307 SCRA 330 (1999); *People vs. Espinoza*, 247 SCRA 66 (1995).
- [35] *People vs. Acala*, *supra*; *People vs. Borce*, 289 SCRA 445 (1998).
- [36] *People vs. Baid*, G.R. No. 129667, July 31, 2000; *People vs. Abuan*, 284 SCRA 46 (1998).
- [37] *People vs. Lacaba*, G.R. No. 130591, November 17, 1999.
- [38] *People vs. Sancha*, *supra*.
- [39] *People vs. Silvano*, 309 SCRA 362 (1999); *People vs. Cantos*, 305 SCRA 786 (1999).
- [40] *People vs. Caisip*, 290 SCRA 451 (1998); *People vs. Atop*, 286 SCRA 157 (1998).
- [41] *People vs. Burce*, 269 SCRA 293 (1997).
- [42] *People vs. Acala*, *supra*.
- [43] TSN (Beverly Brondial), March 5, 1998, pp. 15-19.

[44] 267 SCRA 682 (1997).

- [45] *People vs. Victor*, 292 SCRA 186 (1998), cited in *People vs. Alba*, 305 SCRA 811 (1999); *People vs. Empante*, 306 SCRA 250 (1999); *People vs. Lim*, *supra*; *People vs. Sancha*, *supra*.
- [46] *People vs. Prades*, 293 SCRA 411 (1998).

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