PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO LORICA Y MANJAREZ, ACCUSED-APPELLANT.

G.R. No. 135863. November 22, 2001

Ponente: BUENA, J.

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BUENA, J.:

A father who unleashes raw lust on his own flesh and blood is worse than a beast for humanity has yet to hear a tale of a beast which defiled the sanctity of its own young.

Accused-appellant Virgilio Lorica started sexually abusing his daughter Elenita P. Lorica since she was ten (10) years old when they were still residing in Quezon Province. He raped Elenita whenever his wife and other children were out of their house. He threatened her not to tell anybody about it, otherwise he would kill her.[1] Elenita, who could not stand his father's abuses, nonetheless told her mother about the rapes but her mother did not believe her.[2] Thus, Elenita cowered into silence.

When the family transferred to Brgy. Linga, Pila, Laguna, Elenita was not spared of the same ordeal.[3] Accused-appellant's maniacal assault on Elenita, however, ended on October 20, 1997 when Elenita, after being raped twice on that day,[4] courageously reported the incident to her Ate Inday and friend Richel Rizal.[5] Richel accompanied Elenita to Brgy. Captain Rodolfo Enriquez who lost no time in referring the incident to the Philippine National Police in Pila, Laguna. Elenita's statement was taken[6] and she was also brought to the Laguna Provincial Hospital for medical examination. It was found that Elenita's "vagina admits one finger with ease at 3, 5, 7 and 9 o'clock position with old hymenal tear."[7] Elenita's mother, Felicidad P. Lorica was informed about the incident.

The following day or on October 21, 1997, a formal complaint for rape was filed by Elenita against accused-appellant before the Municipal Trial Court of Pila, Laguna. He was arrested on the same day. In an order dated October 27, 1997, the court furnished appellant a copy of the complaint and affidavits submitted by the complainant and directed him to appear and file his counter affidavit and those of his witnesses within ten (10) days from receipt of the order in accordance with Section 3 (b) of Rule 112 of the 1985 Rules on Criminal Procedure.

On November 20, 1997, finding reasonable ground to hold accused-appellant for trial, an Information was forthwith filed before the Regional Trial Court of Sta. Cruz, Laguna, the fallo of which reads:

> "That on or about October 20, 1997 at Brgy. Linga, Municipality of Pila, province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his daughter, ELENITA P. LORICA, a thirteen-year old girl, against her will and consent, to her damage and prejudice."[8]

Upon arraignment, accused-appellant, assisted by counsel, pleaded not guilty. Thereafter, trial ensued.

Accused-appellant denied having raped his daughter Elenita claiming that on the date in question he was working

at the pet store of Roderick Ravellas in Brgy. Labuin, Pila, Laguna up to 10 o'clock in the evening. Thereafter, he proceeded to Lando Sultan's house at Victoria, Laguna to cook kalamay and stayed there till 7 o'clock the following morning.

On September 18, 1998, the trial court rendered judgment, finding the accused-appellant guilty beyond reasonable doubt of the crime charged and sentenced him to suffer the supreme penalty of death and to pay private complainant P50,000.00 as civil indemnity; P50,000.00 as moral damages; and P50,000.00 as exemplary damages.[9]

Hence, this automatic review.

In assailing the trial court's decision accused-appellant argues that the prosecution failed to establish his guilt beyond reasonable doubt. He claims that the testimony of the private complainant is wanting in details as to how the imputed rape was committed, and that the prosecution, in fishing for incriminating information, proceeded by propounding a leading question which assumed that appellant did not insert his organ into the private complainant before the latter could be given the chance to even report on this point.

We find such argument without merit.

When Elenita testified that she had been raped, she says in effect all that is necessary to show that the rape has been committed.[10] Contrary to the allegations of the accused-appellant, Elenita was able to recall the material details of the several assaults on her honor. In court, she narrated said ordeal:

"TRIAL PROSECUTOR:

"Q

Please tell us how your father raped you at Brgy. Linga, Pila, Laguna, what did he do to you at first?

"A

My mother was not in the house on the date my father raped me.

"COURT:

"Q

Did the Court get you right when you stated that your father raped you?

"A

Yes, Your Honor.

"Q

When you said your father Virgilio Lorica raped you, what did he do to you?

"A

My mother was not in the house, my father called me and he raped me, Your Honor.

"TRIAL PROSECUTOR:

"Q

Did he touch any part of your body?

"A

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Yes, sir.

"Q

What part of your body?

"A

He first touched my thighs, sir.

"Q

Did he kiss you?

"A

Yes, sir.

"Q

In what part of your body did he kiss you?

"A

On my lips, sir.

"Q

How about on your neck?

"A

Yes, sir.

"Q

On your cheeks?

"A

Yes, sir.

"Q

After kissing your lips, your cheeks and your neck, what did he do next? (Witness reluctant to answer)

"COURT:

"Q

Aside from kissing your lips, cheeks and neck, what else if any did your father do to you? (Witness reluctant to answer)

"TRIAL PROSECUTOR:

"Q

What did he do to your vagina, if any?

"A

Yes, sir.

"Q

Please tell us what did he do?

"A

Yes, sir, he did something.

"Q

Did he touch it or insert something on it?

"A

Yes, sir, he touched it."[11]

"x x x x x x x x x

"Q

During the last hearing, you said that your father inserted something in your vagina, am I correct?

"A

Yes, sir.

"Q

Please tell the Court what he inserted in your vagina?

"A

His penis, sir.

"Q

How many times did he insert his penis in your vagina?

"A

Twice, sir.

"Q

Do you know how to count?

"A

No, sir.

"Q

So, it would be more than two times that your father inserted his penis inside your vagina?

"A

Several times, sir.

"Q

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Now, you said he inserted first his penis in your vagina when you were still in Quezon, am I correct?

"A

Yes, sir. We were still in Quezon when he used to do that to me.

"Q

And when you were already staying in Brgy. Linga, Pila, Laguna, he again inserted his penis?

"A

Yes, sir.

"Q

And please tell us where did it happen when you were already in Linga, in what place?

"A

In the house at Linga, sir.

"Q

In whose house was that?

"A

The house we rent, sir.

"Q

What did you feel when he inserted his penis inside your vagina, when you were already at Linga.

"A

It hurt, sir.

"Q

Why?

"A

He inserted it into mine, sir.

"Q

Now what did you do, if any, when he inserted his penis inside your vagina?

"A

I shouted but he covered my mouth.

"Q

Can you tell us how many times he inserted his penis in your vagina when you were already staying in Brgy. Linga, Pila, Laguna?

"A

Also, several times, sir.

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"Q

Now, on October 20, 1997, can you recall, more or less, what time did he insert his penis?

"A

It was noon time and in the afternoon, sir.

"Q

Who were in your house when he inserted his penis?

"A

I was the only one inside the house, sir.

"Q

How about your younger sister, where was she?

"A

Playing outside our house, sir.

"Q

Did you ask your father why he inserted his penis in your vagina?

"A

No, sir.

"Q

Did your father threaten you when he inserted his penis?

"A

Yes, sir. Whenever I tried to shout, he threatened me, he would kill me."[12]

Elenita cannot be expected to remember every ugly detail of the appalling outrage especially so since she might in fact have been trying to forget them.[13] Total recall should not be expected, especially if it is the victim herself on the witness stand.[14] Moreover, Elenita's seemingly hostile attitude when she testified in court is understandable. Elenita, has barely reached puberty, she is young, immature, unschooled and ignorant. We cannot judge her by the norms of behavior expected from mature women.[15] Besides, leading questions are found to be necessary in cases where there is difficulty in getting direct and intelligent answers from a witness who, by reason of tender years or old age, is ignorant, immature, uneducated, confused and terrified.

In fine, we give credence to Elenita's testimony. Her account of the rape on October 20, 1997 is enough to prove accused-appellant's guilt. No woman, especially of tender age, such as the private complainant in this case, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to a public trial if she was not motivated solely by the desire to have the culprit apprehended and punished.[16] Considering the inbred modesty and antipathy of a Filipina in airing public, things that affect her honor, it is hard to conceive that the complainant would assume and admit the ignominy she had undergone if it were not true.[17]

Accused-appellant likewise asserts that the death penalty cannot be imposed on him on the ground that the

prosecution failed to establish the age of the victim beyond reasonable doubt. The prosecution failed to present the birth certificate of the private complainant and that the sworn statement of Felicidad P. Lorica that private complainant was born on March 23, 1984, is hearsay considering that Felicidad Lorica never testified in court.

We find the contention meritorious.

In cases where the victim is alleged to be a minor, it is essential that independent proof of the actual age of the rape victim be given as to remove any iota of doubt that the victim is indeed under 18 years of age as to fall under the qualifying circumstances enumerated in Republic Act 7659.[18] In other words, the minority of the victim must be proved with equal certainty and clearness as the crime itself. Otherwise, failure to sufficiently establish the victim's age is fatal and consequently bars conviction for rape in its qualified form.[19]

In the case at bar, the prosecution failed to present Elenita's birth certificate or any other official document or record to show just how old she really is. Elenita's testimony that she was only 13 years old when accused-appellant raped her is not sufficient evidence to prove her true age. Also, the sworn statement of Felicidad Lorica, Elenita's mother, stating that Elenita was born on March 23, 1984, cannot be given evidentiary value considering that the allegations contained therein were never testified to by the affiant and hence are self-serving and purely hearsay.

Thus, having failed to establish the minority of the complainant, this Court is impelled to hold accused-appellant liable of simple rape only, and to reduce the penalty imposed by the trial court to reclusion perpetua. However, we affirm the trial court's award of P50,000.00 civil indemnity; P50,000.00 moral damages and P25,000.00 exemplary damages.

In rape cases, the award of civil indemnity ex delicto is mandatory upon the finding of the fact of rape.[20] Moral damages are automatically awarded to the victim without the need of pleading or proof, as the mental, physical and psychological trauma suffered by the victim is too obvious.[21] Exemplary damages is awarded to deter fathers with similar perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters.[22]

WHEREFORE, premises considered, the appealed decision finding appellant VIRGILIO LORICA guilty of rape and ordering him to pay private complainant Elenita P. Lorica P50,000.00 as civil indemnity and P50,000.00 as moral damages is hereby AFFIRMED, with the MODIFICATION that the death penalty imposed and the P50,000.00 awarded as exemplary damages are REDUCED to reclusion perpetua and P25,000.00, respectively.

SO ORDERED.

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

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[1] TSN, February 17, 1998, pp. 3-5.

[2] TSN, February 18, 1998, p. 24.

[3] TSN, February 18, 1998, p. 16.

[4] TSN, February 18, 1990, pp. 16-18.

[5] TSN, February 8, 1998, pp. 25-26.

[6] Exhibit "E" dated October 21, 1998.

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[7] TSN, February 3, 1998, p. 4; Exhibit. "B", p. 11, Record.

[8] p. 2, Records.

[9] RTC Decision p. 12.

[10] People vs. Caballes, 199 SCRA 152 [1991].

[11] TSN, February 17, 1998, pp. 6-7.

[12] TSN. February 18, 1998, pp. 16-18.

[13] People vs. Butron, 272 SCRA 352 [1997].

[14] People vs. Mandap, 244 SCRA 457 [1995].

[15] People vs. Remoto, 244 SCRA 506 [1995].

[16] People vs. Dado, 244 SCRA 655 [1995]; People vs. Guibao, 217 SCRA 64 [1993]; People vs. Derpo, 168 SCRA 447 [1988]; People vs. Selfaison, 1 SCRA 235 [1961] cited in People vs. Taneo, 284 SCRA 251, 269 [1998].

[17] People vs. Eclarinal, 182 SCRA 106 [1990]; People vs. Grefiel, 215 SCRA 596 [1992].

[18] People vs. Cula, 329 SCRA 106 [2000].

[19] People vs. Javier, 311 SCRA 126, 141 [2000].

[20] People vs. Pili, 289 SCRA 118 [1998]; People vs. Guiwan, 331 SCRA 70 [2000].

[21] People vs. Alba, 305 SCRA 811, 831 [1999]; People vs. Paredes, 293 SCRA 411, 430 [1998]; People vs. Victor, 292 SCRA 186, 200-201 [1998].

[22] People vs. Matrimonio, 215 SCRA 613 [1992].

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