

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN VALEZ, ACCUSED-APPELLANT.*G.R. No. 136738. March 12, 2001*

Ponente: KAPUNAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-136738/>**KAPUNAN, J.:**

On automatic review is the decision of the Regional Trial Court of Iloilo City, Branch 23, dated August 3, 1998 in Criminal Case No. 47042[1] sentencing accused-appellant Efren Valez to the supreme penalty of death after he was found guilty beyond reasonable doubt of the crime of rape under Art. 335 of the Revised Penal Code as amended by Section 11 of R.A. 7659.

On September 30, 1996, Merlinda Tibubos, assisted by her mother Gloria Tibubos, filed a complaint for rape against Efren Valez allegedly committed as follows:

That on or about the 15th day of August 1996, in the Municipality of Guimbal, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with abuse of confidence and trust, he, being the husband of complainant's half-sister, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with the undersigned, against her will and/or consent, and who was at that time 12 years of age.[2]

Upon arraignment on January 10, 1997, accused-appellant pleaded "Not Guilty" to the charge. Thus, trial on the merits ensued.

The case for the prosecution was hinged on the testimonies of Merlinda Tibubos, the victim-complainant, Gloria Tibubos, her mother, Ofelia Overio, complainant's teacher and Dr. Jocelyn Magsico, the examining physician.

Complainant Merlinda Tibubos was a Grade V pupil in the schoolyear 1996 at Bulwangan Elementary School in Barangay Nanga, Guimbal, Iloilo. At about 11:45 in the morning of August 15, 1996, while she was on her way to her house at Buyuan, Tigbauan after attending her morning classes, she passed by a sari-sari store where she saw the accused-appellant, Efren Valez, in a drinking session. Accused-appellant is the husband of complainant's elder half-sister. Upon noticing Merlinda, accused-appellant called her to come to him. He told her that his wife (complainant's sister) had arrived from Antique and wanted complainant to go to Guimbal with him. She was hesitant at first but upon the assurance of the accused-appellant that her sister wanted to see her, complainant agreed to go with him.

They took a jeep going to Guimbal and alighted at the Batchoyan Plaza. From the plaza, they boarded another jeep bound for Barangay Bulao because the accused-appellant told her that they had to get some of her sister's clothes at the house of his (accused-appellant's) brother. Upon reaching Bulao, they got off the jeep and started walking towards the house of accused-appellant's brother which was some distance away and situated at an elevation. Complainant was walking a few meters ahead of the accused-appellant. As they were passing by a forested area, the accused-appellant pulled her dress from behind. When Merlinda attempted to shout, he hit her at the back of her neck and made her lie down on the ground. When she tried again to shout, the accused-appellant

choked her. He then lifted her skirt, pulled down her shorts and panty and started kissing her. Complainant further narrated her ordeal as follows:

Q: So you were now naked down, what happened next?

A: He showed out his penis and inserted inside my vagina (sic).

COURT:

Q: A while ago you said the accused kissed you, what part of your body he kissed?

A: My vagina.

Q: After kissing your vagina what did the accused do again?

A: He inserted his penis.

xxx xxx xxx

Q: And then what happened?

A: Because the penis can not get inside, I shouted and I begged for his mercy.

Q: After you said you begged for his mercy, what did the accused do?

A: He did not continue inserting his penis because he ejaculated.

Q: But his penis touched your vagina?

A: Yes, sir.

Q: Only it was very painful?

A: Yes, sir.

COURT:

Q: So the penis of the accused penetrate (sic) your vagina or not?

A: Very little only.

Q: How little is little?

A: One-half of an inch.

COURT:

Q: A portion of the penis of the accused penetrated your vagina?

A: Yes, sir.

xxx xxx xxx

FISCAL:

Q:

It was while the penis is a little bet (sic) inside your vagina when the accused ejaculated?

A: Yes, sir.

Q: After the accused had ejaculated, what happened next?

A: I stood up.

Q: How did you know that the accused ejaculated?

A: Because I saw it.

Q: What did you see?

A: Like a "push" (sic)

Q:

Did I get you right that the accused ejaculated while his penis penetrated your vagina one-half of an inch? (sic)

A: He pulled it out and then it ejaculated.

xxx xxx xxx[3]

After succeeding in having carnal knowledge with complainant, accused-appellant warned her not to tell anyone what happened because if she did, he would kill her sister. He also told her that if anyone saw her torn dress and asked her what happened, she should concoct a story that she fell from a cliff. They then went back to the crossing where they first alighted. The accused-appellant stopped by a store to buy cigarettes and borrowed a yellow blouse to replace Merlinda's torn uniform. Thereafter, complainant boarded a tricycle and then a jeepney bound for Guimbal.

It was around two o'clock in the afternoon when Merlinda arrived in Bulwangan Elementary School. She proceeded to her classroom and upon seeing her teacher-adviser, Mrs. Ofelia Overio,[4] complainant disclosed what happened to her. Mrs. Overio immediately brought her to the office of the principal, Mrs. Lolita Espina, who instructed some students to fetch Merlinda's mother. When complainant's mother, Gloria Tibubos, arrived, they brought Merlinda to the Rep. Pedro Trono Memorial Hospital where she was examined by Dr. Jocelyn Magsico.[5]

The testimony of Merlinda was corroborated by the testimonies of her mother, Gloria Tibubos, her teacher, Mrs. Ofelia Overio and the examining physician, Dr. Jocelyn Magsico.

Gloria Tibubos testified that in the afternoon of August 15, 1996, while she was working in the ricefield, a classmate of her daughter came and told her that she should go to Bulwangan Elementary School for a very important matter. When she arrived in school, she saw her daughter sitting on a bench with a lump on her neck. When she asked her what happened, Merlinda disclosed that she was raped by "Efren." They immediately brought her daughter to the Pedro Trono Memorial Hospital where she was examined by Dr. Magsico. They next proceeded to the Guimbal Municipal Hall to report the incident but were told to come back the next day. The following day, August 16, 1996, they reported the matter to the police and filed a case against the accused. Gloria Tibubos also testified that she personally knew the accused-appellant because he was the husband of Ofelia Grañosa, her daughter by her first husband.[6]

Mrs. Ofelia Overio, a teacher at Bulwangan Elementary School in Guimbal, Iloilo testified that between 1 o'clock to 2 o'clock in the afternoon of August 15, 1996, she was teaching Science and Health to her Grade V pupils when she saw complainant Merlinda Tibubos enter the school gate. At that time, she was not wearing her school blouse but one with a yellow color. Complainant entered the classroom without a word. When the teacher approached her to inquire, Merlinda ran to her crying and embraced her. When Mrs. Overio asked her what happened, complainant replied, "Ma'am gin-rape ako" (Ma'am, I was raped).[7] She was shocked by such disclosure so she

immediately brought Merlinda to the office of the principal, Mrs. Lolita Espina. Along with another teacher, Mrs. Garibay, Mrs. Overio interrogated Merlinda. She told them that she was raped by her brother-in-law, Efren Valez. When they asked complainant to take off her blouse, they found hematoma on her neck and face, a lump in her head and bruises and scratches at her back. Merlinda told them that the accused-appellant had dragged and boxed her. They also noticed that her camisole was torn.[8] Immediately, they sent for complainant's mother. When complainant's mother arrived, they brought Merlinda to the Pedro Trono Memorial Hospital for examination. Mrs. Overio also testified that from August 15 to August 29, 1996, Merlinda Tibubos did not go to school.[9]

Dr. Jocelyn Magsico, a resident physician at the Pedro Trono Memorial Hospital narrated that at around 3 o'clock in the afternoon of August 15, 1996, she examined a certain Merlinda Tibubos who complained that she was raped earlier that same day. The examination conducted on the complainant revealed the following findings:

- Contusion, left face and neck;
- Contusion, parietal scalp;
- Contusion, right shoulder;
- Multiple abrasions, left thigh;
- Multiple abrasions, left knee;
- Slight fresh hymenal laceration at 5:00 o'clock position;
- Vaginal smear at external vagina shows sperm cells.[10]

Dr. Magsico further testified that the laboratory report submitted to her by the medical technician, Ms. Josefa E. Caro, showed the presence of sperm cells with few red blood cells and squamous epithelial cells.[11] Dr. Magsico explained that although the hymenal laceration found in the victim's vagina could have been possibly caused by the insertion of a human finger, the presence of sperm cells would indicate that such laceration was more possibly caused by the insertion of an erect adult penis.[12]

On the other hand, the evidence for the defense consisted of the sole testimony of the accused-appellant Efren Valez who denied the accusation of rape but admitted having inserted only his finger into the vagina of the complainant. The accused-appellant testified that at about 11:45 in the morning of August 15, 1996, he was drinking beer at a store in Brgy. Nanga, Guimbal, Iloilo, when he saw his sister-in-law (herein complainant) pass by. He asked her to go with him to the house of his brother in Brgy. Bulao to get some of his children's clothes. While they were on their way, he noticed that Merlinda was going in the wrong direction so he called her. When Merlinda, who was walking ahead of him, stopped, he found himself falling down as he was very drunk so he grabbed the back of Merlinda's dress for support. Both of them fell down. At this juncture, accused-appellant accidentally touched complainant's left breast. It was then that he felt a sudden longing for his wife and became sexually aroused.[13] Thus, accused-appellant narrated:

Q: When both of you fell down, what did you do next?

A: I felt erection of the penis.

xxx xxx xxx

Q: When you were standing according to the victim you fondled your penis, is that correct?

A: Yes, Ma'am.

Q: When you fondled your penis what happened next?

A: I had orgasm and ejaculation.

xxx xxx xxx

Q:

Since you were holding your penis and you reached that orgasm and you ejaculated, where did that fluid which came from your penis go?

A: At the skirt because I kneeled down.

xxx xxx xxx

Q: So you were saying then, after reaching the orgasm and ejaculation what happened to your penis?

A: It soften.

Q: When your penis softened, what happened next?

A: I fondled it again.

Q: When you fondled it again, did it erect again?

A: No, Ma'am, I fingered her and fondled again.

COURT:

Q: When you said you fingered, whom did you finger?

A: Merlinda.

Q: What did you do with your finger?

A: I inserted it in her vagina.

Q: Which finger did you insert into the vagina of Merlinda Tibubos?

A: Left middle finger.

xxx xxx xxx[14]

Accused-appellant denied hurting Merlinda and offered the theory that the bruises and contusions found on her body must have been due to her falling down on the ground. Although he admitted having inserted his finger into the vagina of complainant, he vehemently denied having sexual intercourse with her. He claimed that after the incident, he proceeded to San Joaquin where he was working at that time.

After trial, the trial court rendered judgment on August 3, 1998 finding accused-appellant guilty beyond reasonable doubt of the crime of rape and sentencing him as follows:

WHEREFORE, JUDGMENT is hereby rendered finding the accused Efren Valez GUILTY beyond reasonable doubt of the crime of rape hereby sentencing said accused to the penalty of Death pursuant to Section 11 of Republic Act 7659 amending Article 335 of the Revised Penal Code further condemning said accused to indemnify the victim the sum of P30,000.00 moral damages.[15]

Claiming that the imposition of the capital punishment upon him was uncalled for, accused-appellant raises a lone error in the decision of the trial court:

THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY OF RAPE BEYOND REASONABLE DOUBT WHEN IN TRUTH AND IN FACT THE CRIME COMMITTED IS ONLY ACTS

OF LASCIVIOUSNESS.

Accused-appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt and maintains that the trial court failed to appreciate the evidence pointing to the fact that the crime committed by him was merely acts of lasciviousness. He vehemently denies that he raped the complainant but admits having inserted his left middle finger into her vagina. He argues that he could not have inserted his penis into the vagina of the victim because as testified to by her during cross-examination, he had already reached orgasm and had ejaculated when he allegedly inserted his penis into her private part.[16] This conclusion, accused-appellant points out, is in fact corroborated by the medico-legal evidence because the sperm cells were found outside the vagina and not in the vaginal canal.[17] And, as also admitted by the examining physician, the hymenal laceration in the victim's private part which caused the bleeding may likewise be explained by the insertion of a finger into the vagina.

The Court finds accused-appellant's contentions bereft of merit.

In cases of rape, the trial court, more often than not, is constrained to weigh only the testimony of the complainant as against that of the accused. This is because by the very nature of the crime of rape, only the participants, the victim and the offender, can testify as to its occurrence.[18] Direct testimonies, other than that of the victim herself, are very rare in rape cases and for this reason, conviction or acquittal depends almost entirely on the credibility of the complainant-witness' testimony.

Conviction on the basis of the direct testimony of the complainant alone is neither unusual nor irregular in rape cases. When properly weighed and perceived by the trial court, the lone testimony of the victim may be the sole basis for a conviction for rape. However, it is paramount that extreme caution should be exercised by the trial court in appreciating the testimony of the complainant, taking into consideration the recognized fact that charges for rape are easy to make but hard to prove, and harder still for the party accused who may be innocent to disprove.[19]

In the case under scrutiny, corroborative evidence was in fact presented by the prosecution to supplement the direct testimony of the complainant-witness. These were the testimonies of the complainant's mother, her teacher and the examining physician. However, the crux of the matter, i.e., whether or not accused-appellant inserted his penis or just his middle left finger into the private organ of the complainant, ultimately leads to a consideration of the relative credibility of the complainant's testimony as weighed against that of the accused-appellant.

Accused-appellant maintains that he should only be convicted for acts of lasciviousness because there was no sexual intercourse; he merely inserted his middle finger into the sexual organ of the complainant. In support of his allegation, he quotes a portion of the complainant's testimony on cross-examination as follows:

Q:

Madam witness, you said that while the accused was standing and was touching his penis it became erect and it discharges correct? (sic)

A: Yes, ma'am.

xxx xxx xxx

Q: Do you know that after a man ejaculated the penis is no longer erect?

A: Yes, ma'am.

Q:

So when the accused allegedly inserted his penis into your vagina it was no longer erected?

A: It was still standing.

Q: How did you know it was still standing when his body was covering you?

A:

I felt it.

Q: You did not see the actual insertion of the alleged something into your vagina?

COURT:

The Court will take notice that a woman can not see, how will you see the act?[20]

Accused-appellant vainly attempts to muddle up the testimony of the complainant. She categorically declared that the accused-appellant was able to insert his organ into her vagina, not to the full extent but a little bit, about one-half inch. That his ejaculation came about when his penis was already outside her vagina would be immaterial insofar as the determination of whether the rape was consummated.

In her direct examination, Merlinda straightforwardly described in details how she was ravished:

FISCAL:

Q: What happened next after the accused Valez pulled your dress?

A: I shouted and he boxed me.

COURT:

Q: Were you hit?

A: Yes, sir.

FISCAL:

Q: In what particular part of your body?

A: On the back part of the neck.

Q: After that what happened?

A: He made me lay (sic) down, then I shouted and then he choked me.

Q: While he was choking you what happened next?

A: Because I was wearing a skirt and shorts, the accused lifted my skirt upward.

Q: How about your shorts?

A: He pulled down my shorts.

Q: What kind of shorts was that?

A: Colored light violet.

xxx xxx xxx

Q: After the accused pulled down your shorts, what happened?

A: He pulled down my shorts together with the panty.

Q: After the accused pulled down your shorts what happened next?

A: He kissed me.

Q: So you were now naked down, what happened next?

A: He showed out his penis and inserted inside my vagina. (sic)

COURT:

Q: A while ago you said the accused kissed you, what part of your body he kissed? (sic)

A: My vagina.

Q: After kissing your vagina what did the accused do again?

A: He inserted his penis.

xxx xxx xxx

Q: And then what happened?

A: Because the penis can not get inside, I shouted and I begged for his mercy.

Q: After you said you begged for his mercy, what did the accused do?

A: He did not continue inserting his penis because he ejaculated.

Q: But his penis touched your vagina?

A: Yes, sir.

Q: Only it was very painful?

A: Yes, sir.

COURT:

Q: So the penis of the accused penetrate[d] your vagina or not?

A: Very little only.

Q: How little is little?

A: One-half of an inch.[21]

Contrary to accused-appellant's contention, the foregoing testimony unquestionably established the fact of penetration. What is more, upon further cross-examination and on the trial court's own questioning, complainant was steadfast and unshakeable in her declaration that his penis penetrated her vagina although not to the full extent:

Q: Now, Madam witness, you felt that something was inserted into your vagina that's why you felt pain?

A: Yes, Ma'am.

Q:

Since accused was on top of you and covering you with his body, you did not exactly see what was inserted into your vagina?

A: I know.

Q: Have you seen it?

A: No, Ma'am, but I know.

Q: Now, how did you know what was inserted inside your vagina?

A: While he was still standing he was touching his penis.

xxx xxx xxx

COURT:

Q: What did the accused insert into your vagina?

A: His organ.

Q: How did you know it was his penis that was inserted into your vagina?

A: While I was lying he let his penis out.

xxx xxx xxx

Q: Did the accused succeed in penetrating your vagina?

A:

Yes, sir but only a little.

Q: About how many inches penetrated your vagina by using this ball pen?

A: About one-fourth (1/4) of an inch.

Q: How long did that insertion last?

A: About one minute.

Q: Can you tell the Court what was that thing that was inserted by him into your vagina?

A: His organs (sic).

xxx xxx xxx

Q: Is it not that what the accused inserted was his finger and not his penis?

A: No, sir.

Q: So you maintained that it was his penis that was inserted on your vagina?

A: Yes, sir.[22]

It is well-settled that where the accused tried to insert his penis into his victim's vagina, that was all that was necessary to commit consummated rape.[23] Full penetration of the victim's genital organ is not required in order to sustain a conviction for rape.[24] In fact, so long as there was an attempt to insert, even without rupture of the hymen,[25] rape is considered to have already been consummated. In this case, undoubtedly, there is no issue as to whether or not there was insertion or penetration which calls for a fine distinction between mere brushing or "epidermal contact" and actual touching or sliding into the female organ as enunciated in the case of *People vs. Campuhan*.[26]

As if his puerile argument was not enough, accused-appellant now foists upon us the theory that there could have

been no penetration by his penis because she did not actually see his penis being inserted into her vagina. When accused-appellant's counsel asked the victim on cross-examination if she saw the actual insertion of his penis into her vagina, the trial court cut short the nonsensical question with the observation: "The Court will take notice that a woman cannot see, how would you see the act?"[27] The complainant, even in her innocence gave a graphic and truthful description of the penetration when she said that she knew it and she felt it.

Moreover, during her re-direct examination, Merlinda explained that when the accused-appellant was already on top of her, his two hands were holding both her hands.[28] This belies accused-appellant's claim that it was only his finger which he inserted into the vagina of the complainant.

When taken in its entire context, therefore, the testimony of the complainant during her cross-examination is consistent with what she declared on direct examination. It must be pointed out that in cases of rape, complainant's testimony must be considered and calibrated in its entirety and not by truncated portions or isolated passages thereof.[29] In the case under scrutiny, the Court finds complainant's testimonies on her direct and cross-examination consistent with and corroborative of one another.

Thus, the Court affirms the finding of the trial court that the guilt of the accused-appellant for the crime of rape has been proven beyond reasonable doubt. However, the trial court erred in imposing the penalty of death.

The accused was prosecuted for the crime of rape under Art. 335 of the Revised Penal Code as amended by Sec. 11 of RA 7659. Art. 335 provides:

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

xxx xxx xxx

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

- 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.

Minority and relationship under the first paragraph are special qualifying circumstances which qualify rape to warrant the mandatory penalty of death. As such, they must both be specifically pleaded in the Information and proven during trial. These two circumstances, minority and relationship, must concur;[30] otherwise, if only one is proven during trial, even if the Information alleged both, the death penalty cannot be imposed. And, as special qualifying circumstances, the same must be proven beyond reasonable doubt as the crime itself.

In the case under review, we find that evidence is wanting as to the special qualifying circumstance of minority. The only proof as to the minority of the complainant is her testimony during direct examination that she was 13 years old and a Grade VI student.[31] No other proof was presented by the prosecution to establish complainant's minority at the time of the incident. Even complainant's mother, Gloria Tibubos, failed to testify as to her daughter's age on the witness stand.

In *People vs. Tipay*,[32] the victim was alleged to be 15 years old at the time of the commission of the crime. Although the age was properly pleaded in the Information, there was no independent evidence to prove such age. The Court observed that it was difficult to differentiate a 16-year old girl from an 18-year old, hence, the prosecution's proof of minority age must be given the strictest scrutiny. For this reason, the Court did not mete out the penalty of death. The lack of denial on the part of the accused did not excuse the prosecution from discharging its burden of proof as to minority.

In the case of *People vs. Javier*,^[33] the Court found lacking independent proof of age of the complainant who was alleged to be 16 years old at the time of the incident, notwithstanding the failure of the accused to contest such age. It was observed that since there is not much difference between a 16 and an 18 year old woman, independent proof of the actual age of the victim becomes particularly vital and essential.

In *People vs. Tundag*,^[34] the victim testified that she was 13 years old at the time of the rape. However, she admitted that she did not know exactly when she was born. The Court ruled that judicial notice of the age was improper despite defense counsel's admission and that independent proof of the victim's age such as the birth or baptismal certificate should have been presented.

In *People vs. Brigildo*,^[35] the Court found no sufficient proof of the victim's minority, thus:

The separate Informations in Criminal Case Nos. 4591-0 and 4607-0 alleged that the offended party in the two rape cases was the appellant's step-daughter who is 11 years old. It is undisputed that the victim in the instant case is a minor. However, the records are unclear as to her exact age. The prosecution failed to present her birth certificate or any other evidence to prove just how old she really is. The separate Information filed alleged that the victim was 11 years old when she was raped in March and October 1994. Yet, testifying a year later, complainant claimed she was only 11 years old. Her mother's testimony on cross examination, by contrast would seem to indicate that she was around 15 years old at the time of the rapes complained of x x x.

Thus, we are faced with the uncertainty regarding private complainant's exact age, not only because of the prosecution failed to present her birth certificate or other equally acceptable official document concerning her date of birth.

In the case of *People vs. Cula*,^[36] the qualifying circumstance of minority was not appreciated by the Court because there was no evidence at all to prove the victim's age. While the complainant alleged that the victim was 16 years old when the crime was committed, which was not denied by the accused, there was no independent evidence at all to prove the victim's age such as the victim's certificate of live birth. The Court noted that the trial court failed to make a categorical finding regarding the minority of the victim.

However, in the case of *People vs. dela Cruz*,^[37] we accepted the testimony of the mother as proof of the minority of the victims who were 15 and 14 years old without the presentation of their birth certificate or any other official document. The mother of the victims categorically testified as to their ages and the Court found no reason to doubt her testimony as she has personal knowledge, as a mother, of the ages of her children. The Court differentiated the case from *Javier*, *Cula*, *Tipay*, and *Brigildo*, saying:

In the case at bar, however, the prosecution proved the minority of the age of the victim beyond reasonable doubt. Delia the victim's mother, categorically testified in the hearing of October 9, 1996 that her daughters were both (14) years of age at the time the rape incidents complained of x x x.

There is no reason to doubt Delia's testimony. As a mother, she has personal knowledge of the ages of her children. Her testimony was never challenged by the accused who could have presented the victim's birth certificate. Delia's testimony stood un rebutted by any other evidence (emphasis theirs).

In the case under review, other than the allegation in the complaint and the victim's own testimony, there is no other evidence at all as to her minority. Her mother, who took the witness stand, and who could have provided evidence as to the victim's age failed to testify thereon. Hence, for failure to sufficiently establish the special qualifying circumstance of minority, the penalty of death cannot be imposed.

As to filiation, the Court notes that the circumstance of relationship by affinity within the third civil degree was properly alleged in the Information which stated that accused-appellant "is the husband of complainant's half-sister" and likewise duly proven during trial. Complainant Merlinda herself declared that accused-appellant

was the husband of her elder sister.[38] Gloria Tibubos, mother of the complainant and mother in-law of the accused also testified that accused-appellant is his son-in-law.[39] Moreover, the accused himself admitted that the victim is his sister-in-law:

xxx xxx xxx

Q Now, while you were at the store drinking what happened?

A It so happened my in-law passed by and I called her.

Q Who is this sister-in-law you are referring to who passed by?

A Merlinda Tibubos.

xxx xxx xxx[40]

We hold that these testimonies taken together are sufficient to prove the relationship between accused-appellant and complainant. This notwithstanding, for failure of the prosecution to establish minority by proof beyond reasonable doubt, the death penalty cannot be imposed.

Finally, the Court notes that the trial court failed to include in its disposition an award of civil indemnity to the victim and awarded moral damages to her in the amount of P30,000.00. In light of recent jurisprudence, the amount of P50,000.00 civil indemnity, in addition to the award of moral damages, which should be increased from P30,000.00 to P50,000.00, is imposed on accused-appellant.[41]

WHEREFORE, the decision of the Regional Trial Court of Iloilo City, Branch 23, in Criminal Case No. 47042 finding the accused-appellant EFREN VALEZ guilty of rape under Art. 335 of the Revised Penal Code as amended by Section 11 of R.A. 7659 is **AFFIRMED**, with the modification that the penalty is reduced to reclusion perpetua and accused-appellant is ordered to pay his victim Merlinda Tibubos, the amount of P50,000.00 as civil indemnity in addition to the award of moral damages, which is increased to P50,000.00.

SO ORDERED.

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

[1] Presided by Hon. Judge Tito Gustilo.

[2] Roll of Exhibits, p. 1.

[3] TSN, April 24, 1997, pp. 9- 11.

[4] Interchangeably spelled as "Overio" in the Transfer Stenographic Notes and "Oberio" in the decision of the Regional Trial Court

[5] Testimony of Merlinda Tibubos, TSN, April 24, 1997.

[6] TSN, August 1, 1997, pp. 15 .

[7] Id., at 5.

[8] Id., at 8-9.

[9] Id., at 10

- [10] Roll of Exhibits, p. 4.
- [11] TSN, May 9, 1997, pp. 38-39 and Roll of Exhibits , p. 5.
- [12] Id., at 40-41.
- [13] TSN, August 14, 1997, pp. 7-9.
- [14] Id.,at 9-10.
- [15] Decision of the trial court, Records, pp. 192-204.
- [16] TSN, July 18, 1997, p. 9.
- [17] TSN, May 9, 1997, pp. 47-49.
- [18] People vs. Abuan, 284 SCRA 46 (1998).
- [19] People vs. Bacdad, 196 SCRA 768 (1991).
- [20] TSN, July 18, 1997, p. 9.
- [21] TSN, April 24, 1997, pp. 8-11.
- [22] TSN, July 18, 1997, pp. 4-6.
- [23] People vs. Clopino, 290 SCRA 432 (1998).
- [24] People vs. Tabugoca, 285 SCRA 312 (1998).
- [25] People vs. Calma, 295 SCRA 629 (1998).
- [26] G.R. No. 129433, March 30, 2000.
- [27] TSN, July 18, 1997, p. 9.
- [28] Id., at 10-11.
- [29] People vs. Gaorana, 289 SCRA 652 (1998).
- [30] People vs. Ramos, 296 SCRA 559 (1998).
- [31] TSN, April 24, 1997, p. 2.
- [32] G.R. No. 1311472, March 28, 2000.
- [33] 311 SCRA 122 (1999).**
- [34] G.R. Nos. 135695-96, October 12, 2000.
- [35] G.R. No. 124129, January 28, 2000.
- [36] G. R. No. 133146, March 28, 2000.
- [37] G.R. Nos. 131167-68, August 23, 2000.
- [38] TSN, April 24, 1997, p. 3.
- [39] TSN, August 1, 1997, p. 15.

[40] TSN, August 14, 1997, p.3.

[41] People vs. Perez, 307 SCRA 276 (1999); People vs. Prades, 293 SCRA 411 (1998).

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