

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODITO DAGANIO, ACCUSED-APPELLANT.

G.R. No. 137385. January 23, 2002

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PER CURIAM:

Accused-appellant Rodito Daganio, Sr., was charged with rape by his minor daughter, Virgie Daganio.[1] The Information[2] against him reads:

“That on or about the 6[th] day of September 1994, at Sapad, Lanao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation, to wit: by then and there threatening to kill one VIRGIE DAGANIO if she will resist and report to her mother accused’s criminal designs, and thereafter lie with and have carnal knowledge of said VIRGIE DAGANIO, his 11 YEAR OLD daughter, against her will and consent.

CONTRARY to and in VIOLATION of Article 335 of the Revised Penal Code.”

When arraigned, the accused-appellant entered a plea of not guilty.[3] Trial on the merits followed.

The prosecution evidence came chiefly from the victim, Virgie Daganio, the victim’s mother, Laureta Daganio, and the examining physician, Dr. William Canoy.

The victim testified that her father (accused-appellant) raped her several times in their house. Her first defilement was in the month of December, but she could no longer recall what year it was.

The second rape took place in the evening of September 6, 1994. She was then 11 years old. That night, her mother (Laureta) was in Pikalawag, Lanao del Norte. The victim was playing with her younger siblings when the accused-appellant told her to go inside the house. She obeyed him. Inside their house, the accused-appellant first placed his finger in her vagina because it was too small. Next, he inserted his penis. Half of the penis penetrated her.[4] After the sexual assault, he warned her not to tell anyone about the rape or he would cut her neck. Despite the threat, the victim related her harrowing experience to her mother, Laureta Daganio.[5]

The victim claimed that even before she was raped by the accused-appellant, her parents would quarrel a lot because the accused-appellant was always drunk. Sometimes her parents would fight because the accused-appellant “touched” her. There were also instances when the accused-appellant would hit Laureta with fist blows during their heated arguments.[6]

Laureta Daganio testified that the victim was eleven years old at the time the accused-appellant raped her. She further claimed that accused-appellant also raped their other daughter, Rita Daganio, when the latter was 15 years old. Laureta forgave the accused-appellant then. However, when she learned of the similar plight of the victim in the hands of the accused-appellant, she reported the incident to the authorities and assisted the victim in filing the complaint for rape against the accused-appellant.[7]

Dr. William Canoy testified that he conducted a medical examination on the victim on September 15, 1994. There

were no fresh wounds in the vagina, although he found edema (slight swelling emission of the skin) around the victim's labia majora and healed lacerations in the hymen at 6, 7, 1 and 8 o'clock positions. He opined that the edema could have been caused by hard or blunt objects or by a man's penis.[8]

The accused-appellant denied the accusations of the victim. He claimed that on September 6, 1994, he was ill so he stayed in bed the whole day. When asked if he sexually molested the victim on said date, he replied that he did not know if he did because of his fever. He declared that he loves Laureta and that their relationship before September 6, 1994 was harmonious. He alleged that he never quarreled with her. He claimed he did not know why she filed the rape case against him.[9]

After trial, the court a quo rendered its judgment,[10] finding the accused-appellant guilty as charged. He was sentenced to suffer the supreme penalty of death and ordered to indemnify the victim in the amount of P50,000.00.

Hence, the automatic review of the case.

The accused-appellant contends that:

"I.

THE COURT A QUO ERRED IN GIVING CREDENCE TO THE TESTIMONY OF VERGIE (sic) DAGANIO.

II.

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED (APPELLANT) NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."

We affirm the assailed judgment.

The accused-appellant claims that the prosecution propounded leading questions on the victim. He asserts that had the trial court sustained the timely objections of his counsel, the victim would not have been able to establish the rape. We are not persuaded.

It is true that leading questions are generally not allowed and have little probative value. However, Section 10, Rule 132 of the Rules of Court[11] provides:

"Sec. 10. Leading and misleading questions. - A question which suggests to the witness the answer which the examining party desires is a leading question. It is not allowed, except:

X X X X X X X X

(c) When there is difficulty in getting direct and intelligible answers from a witness who is ignorant, or a child of tender years, or is of feeble mind, or a deaf mute.

X X X X X X X X."

In the case at bar, the victim was twelve (12) years old when she testified in court. When most children her age were already in Grade VI of elementary education, she was only in Grade III. We can also glean from her testimony that she could not grasp the legal concept of "rape." Thus, the trial judge correctly allowed the prosecutor to ask leading questions to ferret out the truth.

The trend in procedural law is to give wide latitude to the courts in exercising control over the questioning of a child witness. The reasons are spelled out in our Rule on Examination of a Child Witness,[12] which took effect on December 15, 2000, namely, (1) to facilitate the ascertainment of the truth, (2) to ensure that questions are

stated in a form appropriate to the developmental level of the child, (3) to protect children from harassment or undue embarrassment, and (4) avoid waste of time. Leading questions in all stages of examination of a child are allowed if the same will further the interests of justice.

The totality of the evidence presented shows beyond reasonable doubt that the accused-appellant raped the victim on September 6, 1994. During the cross-examination, the victim gave a detailed and candid account of the rape incident. She testified as follows:[13]

“(ATTY. GUBAT):

Q:

You said that your father used his fingers, how did your father used (sic) his fingers in raping you?

(VIRGIE):

A:

He placed his fingers and his penis into my vagina.

Q:

And your father’s fingers and penis were entrusted (sic) to your vagina at the same time is that right?

A:

A little.

Q:

What do you mean by a little?

A:

It’s half.

Q:

What do you mean by half?

A:

Half of the penis.

Q:

You said your father used his fingers, how many fingers were used?

A:

Only one.

Q:

Which of the fingers?

A:

In the left hand.

Q:

Which of the fingers in the left hand?

A:

The middle finger.

Q:

Have you seen the penis of your father?

A:

Yes, sir.”

(emphases ours)

The accused-appellant points out that Dr. William Canoy did not find fresh wounds on the genitalia of the victim. Allegedly, the absence of said wounds creates a doubt on her claim that she was raped on September 6, 1994. We disagree.

The records clearly show that accused-appellant had carnal knowledge of the victim. Dr. Canoy categorically stated that he found swelling in the genitalia of the victim that could have been caused by a male organ. The medical findings of the physician also showed that she had lacerations in her vagina at 6, 7, 1 and 8 o'clock positions.[14] Said lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.[15]

To discredit the victim, the accused-appellant claims it was easy for the victim to shout and ask for help as her siblings were in the vicinity when the rape took place. She did not. Thus, he submits that her accusations do not deserve credit. The allegation lacks merit.

A rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her.[16] Indeed, a young girl would not ordinarily file a complaint against anybody, much less her own father, if it were not true.[17] Thus, the victim's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out details on an assault to her dignity cannot be dismissed as mere concoction.[18]

We also take judicial notice, and it can be considered of public knowledge, that the scene of the rape is not always or necessarily isolated or secluded. Lust is no respecter of time or place.[19] It goes against human experience that a girl would fabricate a story which would drag herself as well as her family to a lifetime of dishonor, unless that is the truth, for her natural instinct is to protect her honor. More so, where her charges could mean the death of her own father, as in this case.[20] Undoubtedly, the accused-appellant was correctly found guilty of raping his daughter.

Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, reads:

“The death penalty shall also be imposed if the crime of rape 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 x x x .”

We have always stressed the rule that the minority of the victim and her relationship to the accused must be duly alleged and proved to justify the imposition of the death penalty.[21] In some cases,[22] we did not mete out the death penalty for failure of the prosecution to present the minor’s birth certificate or for non-presentation of independent evidence that would prove the victim’s age.

In the case at bar, the information alleged that the victim was then eleven (11) years old. This fact was established through the testimony of the victim’s own mother, Laureta Daganio, and admitted by the defense at the trial that the presentation of the victim’s Certificate of Live Birth was dispensed with at the instance of the defense counsel.[23] Being the victim’s mother, Laureta Daganio has personal knowledge of the age of the victim. Thus, we fully agree with the trial court that the minority of the victim was duly established. We do not doubt her because there was no showing that she was motivated by ill feelings to accuse her own husband of a grievous offense.

In the case of *People vs. Dela Cruz*,[24] this Court has also relied on the testimony of the victims’ mother as to the minority of her daughters and imposed the death penalty on the accused. We held:

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

x x x x x 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 victims’ birth certificates. Delia’s testimony stood un rebutted by any other evidence. To be sure, this is not the first time that the Court is relying on the testimony of the victim’s mother to establish the minority age of the victim. In *People vs. Balgos*, where the rape victim was six (6) years of age, we relied on the testimony of the victim’s mother to prove the victim’s age. Reposing trust on the testimony of the victim’s mother, we imposed the death penalty on the accused-appellant.”

Stare decisis et non quieta movere. [25] The doctrine leaves us no choice but to apply the full force of the law and impose the supreme penalty of death on the accused-appellant. As in the case of *Dela Cruz*, *supra*, we have no reason to doubt the sincerity of the victim’s mother when she told the trial court that her daughter was only eleven (11) years old when the accused-appellant raped her.

We note that the trial court awarded civil indemnity to the victim in the amount of P50,000.00. The present rule is to award civil indemnity in the amount of at least P75,000.00.00 as the rape was qualified by any of the circumstances under which the death penalty is authorized under R.A. No. 7659.[26]

Further, the victim is entitled to moral damages, in the amount of P50,000.00 and exemplary damages, in the amount of P25,000.00. In rape cases, moral damages may be awarded to the victim in the criminal proceeding in such amount as the Court deems just, without the need for pleading or proof of the basis thereof. The fact that the complainant has suffered the scars of mental, physical and psychological trauma which constitute the basis for moral damages are too obvious to still require the recital thereof at the trial by the victim, since the Court itself even assume and acknowledge such agony on her part as a gauge of her credibility.[27] Exemplary damages, on the other hand, may be imposed in the case of incestuous rape to deter other fathers with perverse tendency or aberrant sexual behavior from sexually abusing their own daughters.[28]

Four (4) members of the Court maintain their position that R.A. No. 7659, insofar as it prescribes the death penalty, is unconstitutional. Nevertheless, they submit to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty should be imposed accordingly.

IN VIEW WHEREOF, the Decision of the Regional Trial Court of Kapatagan, Lanao Del Norte, (Branch 21), in Criminal Case No. 21-197, sentencing the accused-appellant, RODITO DAGANIO, to death is AFFIRMED. The civil indemnity in the amount of P50,000.00 is modified and increased to P75,000.00. In addition, the accused-appellant is ordered to pay the amount of P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

Pursuant to Section 25 of R.A. No. 7659, amending Section 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 for possible exercise of pardoning power.

SO ORDERED.

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

[1] Also referred to as Vergie Daganio in some parts of the records.

[2] Rollo, p. 9.

[3] Original Records, p. 19.

[4] TSN, Virgie Daganio, September 26, 1995, pp. 4-5, 12.

[5] Id., pp. 11-31; TSN, Laureta Daganio, November 14, 1995, p. 4.

[6] TSN, Virgie Daganio, September 26, 1996, pp. 7-9.

[7] TSN, Laureta Daganio, November 14, 1995, pp. 4-5.

[8] TSN, William Canoy, March 18, 1998, pp. 3-5; cf. Exh. "C", Original Records, p. 2.

[9] TSN, Rodito Daganio, September 15, 1998, pp. 2-4.

[10] Rollo, pp. 15-25.

[11] In Section 4 of the recently passed Rules on Examination of a Child Witness, a "child witness" has been defined as one who "at the time of giving testimony is below the age of eighteen (18) years." In child abuse cases, a "child witness" includes "one over eighteen (18) years but is found by the court as unable to fully take care of himself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or

condition.”

[12] Section 19.

[13] TSN, Virgie Daganio, September 26, 1995, p. 12.

[14] Supra note 8.

[15] People vs. Acala, 307 SCRA 330 (1999).

[16] People vs. Juntilla, 314 SCRA 568 (1999).

[17] People vs. Sacapaño, 313 SCRA 650 (1999).

[18] People vs. Molar, 286 SCRA 684 (1998).

[19] People vs. Tundag, G.R. No. 135695-96, October 12, 2001.

[20] Ibid.

[21] People vs. Bayya, 327 SCRA 771 (2000).

[22] See People vs. Javier, 311 SCRA 122, 140-141 (1999); People vs. Tipay, 329 SCRA 52 (2000); People vs. Cula, 329 SCRA 101 (2000); People vs. Brigildo, 323 SCRA 631 (2000).

[23] TSN, Laureta Daganio, November 14, 1995, p. 4.

[24] 338 SCRA 582, 599 (2000).

[25] It is best to adhere to decisions and not disturb questions put at rest.

[26] People vs. Prades, 293 SCRA 411 (1998); People vs. Victor, 292 SCRA 186, 200-201 (1998); People vs. Dela Cruz, supra.

[27] People vs. Prades, supra; People vs. Ramos, 296 SCRA 559 (1998).

[28] People vs. Santos, G.R. Nos. 138308-10, September 26, 2001; People vs. Aquino, G.R. No. 136840-42, September 13, 2001; People vs. Catubig, G.R. No. 137842, August 23, 2001.

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