THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO TAGUN, ACCUSED-APPELLANT.

G.R. No. 137745. February 15, 2002

Ponente: PUNO, J.

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PUNO, J.:

The world was anything but generous to Charity Tagun. Left to her paternal grandma's care by her mother, who had to seek greener pastures in a foreign land, her womanhood was defiled at an age when she barely was a girl. Worse, she points to her own father, appellant Reynaldo Tagun, as the author of the beastly act. Once again, before this court is a criminal case of an incestuous rape committed by a father against his minor child.

Appellant was indicted and tried under the following Information:

> "That on or about and during the period covered by the months of December of 1991 to December of 1992, in the City of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, taking advantage of his ascendancy and influence as father of the victim and by means of force, threats and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of his daughter, Charity Tagun y Bebon, a child of five years and daughter of the undersigned complainant, against the will of said child, and with the aggravating circumstance of relationship, the victim being the daughter of the accused.
>
> Contrary to law."[1]

Upon arraignment, he entered a plea of Not Guilty. Thereafter, the case immediately proceeded to trial.

It appears from the evidence adduced by the prosecution that the complainant Charity Tagun is the daughter of appellant Reynaldo Tagun, whom she calls "papa." A girl of tender age,[2] she does not know how to read or write, for lack of formal schooling. She testified[3] that on one occasion between the periods from December 1991 up to December 1992, her papa inserted his penis into her pekpek. Together with her brother James, she was at that time staying with, and being taken care of by the appellant and her paternal grandma because her mother was working as a domestic helper in Hongkong. The incident happened one night, the exact date of which she could not remember, in a room in her grandmother's house. Before inserting his penis to her vagina, her papa told her what he was about to do. He then succeeded in introducing his sexual organ into hers. This made her cry due to the pain that she experienced. Appellant, however, merely told her to stop before proceeding to insert his penis for the second time. He also inserted his finger into her vagina. She remembered the sight of blood caused by her bleeding.

In December 1992, while vacationing from her work, Norily Tagun,[4] the mother of Charity, learned of the fate her daughter suffered in her husband's hands. Upon her arrival, she stayed with appellant in the house of her mother-in-law. Barely a week into her holiday, she was notified by Charity that appellant inserted his penis into her vagina. The exact words of her young child broke her heart: "Mama, si Papa, dinukit ang pipi ko,... inilusot ang titi nya sa pipi ko,..."[5] She then asked her sister Mercidita Caday to accompany her and her daughter to the

Quezon Memorial Hospital to have the latter physically examined. Dra. Maricel P. Rivera performed the check-up on December 11, 1992.

Dra. Rivera testified[6] that she conducted a medical examination of Charity Tagun. Her findings were reduced in a Medical Report, dated May 5, 1993, which revealed that the child had "deep healed hymenal laceration" and other superficial lacerations. The wounds could have been caused by sexual intercourse or insertion of foreign objects to the vagina. The deep healed hymenal laceration at six o'clock position indicated a possible attempt at penetration by a male genitalia. The lack of spermatozoa could merely signify that the penetration happened sometime prior to the child's physical check-up since spermatozoa has a lifetime of only 48 to 72 hours.

After learning the result of the examination, Norily confronted her husband about the whole mess. The latter warned that if she causes his imprisonment, he will kill her and the child. He also threatened to hide the child if she files any complaint against him. She decided to bring Charity to her sister Mercidita's house out of fear the appellant would make good his evil threat. She then went back to Hongkong on January 7, 1993. She was forced to return to the Philippines in April 1993 after receiving a voice tape from the appellant telling her that if she does not send him money, he will take Charity from her sister. Mustering enough courage, she finally reported the rape to law-enforcement authorities on May 4, 1993. The next day, her husband was brought to the police station for investigation. He was able to escape, though, on the pretext that he was going outside just to buy softdrinks.

Professing innocence, appellant, for his defense, offered an alibi. He presented, aside from himself, two other witnesses to substantiate his defense, namely, his sister Lourdes Sumale and his mother Gregoria Tagun.

Lourdes recalled that sometime in November 1992, her niece Charity went to her house. The child was at that time living with the two brothers of her mother: Ramon and Isyo, both surnamed Bebon. On that occasion, her sister Remedios requested her to wash the little girl's vagina. The former apparently noticed Charity scratching it. When she was washing the girl's private organ, Charity told her it was painful. She noticed it was reddish and swollen (namamaga). When she asked Charity why it was in that condition, the little girl replied, "gawa ni Isyo." She then told her mother about her discovery and the child's revelation. They immediately agreed that Charity's parents should know this matter as soon as possible. For her part, she telephoned appellant in Hongkong. While she did not tell him the real purpose of her call, she asked him to come home at the earliest moment he could. When Reynaldo arrived from abroad, his family told him the sad incident involving his child. Thereafter, Reynaldo fetched Charity from the house of her uncles and took custody of her. She admitted, during cross examination, that she did not report the matter to the police nor brought Charity to a hospital for the reason that she opted to leave the decision on what to do with the child to the latter's parents.

The testimony of Lourdes was confirmed by Gregoria. She stated that sometime in November 1992, her daughter Lourdes informed her that she noticed Charity's vagina reddish and swollen. The child apparently admitted to her aunt that it was "because of Isyo." Upon hearing this horrible information, she summoned her children Lourdes, Jasmine and Floro to decide what to do with the child. They unanimously agreed to call her father, who thereafter arrived in the first week of December, 1992. When appellant learned of the child's condition, he got angry and removed his children Charity and James from the custody of Isyo. Gregoria then took care of the kids for about one week, afterwhich their mother came and took them away.

Lastly, appellant declared that he was employed abroad as a seaman since 1983. The first time he returned to the country was in September 1988, when Charity was born. Upon his arrival, he discovered that most of their personal belongings plus the title of the land he and his wife bought were missing. He inquired from his spouse, Norily, about what happened to their properties. He recalled her exact reply: "Tanga, tatanong-tanong ka pa sa akin!" They thereafter decided to live separately. He stayed with his mother for a year or so in 1989. The next

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year, he worked abroad again. He returned in 1992 after receiving a radio telegram from his ship captain asking him to do so. He returned in the first week of December, 1992. He proceeded immediately to his mother's house where his mother and sister broke to him the bad news regarding Charity's reddish and swollen vagina. His sister informed him that the culprit was Isyo, his brother-in-law. The first thing that crossed his mind was to take the custody of his two children from Isyo. He brought them to the house of his mother. In a family meeting with his two sisters, Lourdes and Amy, and his mother, he examined the vagina of Charity which he noticed to be "reddish and swollen." He thought of filing a criminal case against Isyo. When he consulted a lawyer, however, the latter asked for a witness to the incident. Since he could not produce any, he scrapped the idea of a court action. Later, he went to Sampaloc, Quezon, where he stayed for a week. During that period, his mother called to inform him that his wife Norily took the two children away from their house. Since then, they never saw each other except during the hearings held in court. To conclude, he denied having inserted his penis into the vagina of Charity for two times.

On cross examination, he testified that he lost his passport and seaman's book while he was detained inside the city jail. He admitted that he failed to get a certification of his return to the Philippines from his ship captain. So, too, was he not able to get a certification of his date of arrival in the country from Cathay Pacific in view of his lost plane ticket. He could not also present the telegraphic message sent to him. He explained that he did not confront Isyo about the incident because he wanted to avoid scandal. Finally, he insisted that from 1988 to 1992, he was out of the country.

After both parties rested their respective cases, the trial court rendered its decision convicting the appellant, thus:

> "WHEREFORE, in the light of the foregoing, the Court finds the accused REYNALDO TAGUN, a resident of Bgy. Gulang-gulang, Lucena City, guilty beyond reasonable doubt, as principal, of the crime of Rape, defined and punished under Art. 335, par. 3 of the Revised Penal Code and hereby imposes upon him the penalty of imprisonment of RECLUSION PERPETUA with all the accessory penalties provided therein; 'to pay the offended party, Charity B. Tagun and the complainant mother, Norily B. Tagun, the sum of Fifty Thousand pesos (P50,000.00) as moral damages; another amount of Thirty thousand pesos (P30,000.000) as exemplary damages; and to pay the costs of the suit.
>
> SO ORDERED."[7]

Dissatisfied with the judgment, appellant interposed the present appeal. In his brief, he assigns the following errors:

> "1. The court a quo erred in finding, contrary to the evidence that it was the accused-appellant who sexually molested his daughter and in not finding that Isyo Bebon, the victim's uncle, as the culprit.
>
> 2. The court a quo erred, contrary to evidence, in giving undue credence to the testimony of the victim that the accused-appellant inserted his penis twice into her vagina which is not consistent with medical findings and testimony of the gynecologist who examined the victim and despite the fact that it has been established that she is a coached and rehearsed witness.
>
> 3. The trial court erred in not finding, contrary to the evidence, that the victim's mother Norily Bebon Tagun, had ulterior motives in testifying against the accused-appellant.
>
> 4. The trial court erred in not finding, contrary to the evidence, that the testimony of the accused and his witnesses are the true and accurate accounts of what really happened to the victim.
>
> 5. The court a quo erred in not acquitting accused-appellant on the ground that the prosecution failed to establish the guilt of the accused beyond the peradventure of doubt.

6. The court a quo erred in finding, contrary to law, that the admission of counsel, as part of the stipulation of facts, that the child, Charity, was in the custody of the accused-appellant from 1 December 1991 to December of 1992 is evidence that contradicts appellant's claim that he was abroad in Hongkong during that period."[8]

We affirm appellant's conviction.

Our review of the evidence convinces us with moral certainty that Charity Tagun was sexually abused by the appellant. Worthy to note, the young victim testified in a categorical, frank, spontaneous manner and remained consistent in recounting the material occurrences of the criminal incident, thus:

"Q

Please look around and tell us whether your father Reynaldo Tagun is inside the courtroom and please point him out?

A

There, sir.

Note: (the person pointed to by the witness when asked of his name gave his name as Reynaldo Tagun)

Q

Now last year or between the period beginning from December of 1991 to December of 1992 do you remember anything that your Papa has done to you?

A

He inserted his penis into my "pekpek," sir.

FISCAL GARCIA

May we request that the answer in tagalog be made on the record, Your Honor.

COURT

Granted.

WITNESS

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A

"Isinuot nya ang kanyang titi sa aking pekpek."

FISCAL GARCIA

Q

Aside from the penis of your Papa, was there anything else that was inserted in your sexual organ?

A

Yes, sir, (Note: Witness pointing to her finger), his finger.

Q

Now when you said your Papa inserted his penis into your sexual organ, did you experience pain?

A

Yes, sir, painful, "masakit".

Q

When your Papa inserted his penis into your sexual organ was there any bleeding that you experienced?

A

Yes, sir, it bleeds (sic).

Q

And after your sexual organ became bloody was your sexual organ washed?

A

Yes, sir, it was washed by Ate Lourdes.

Q

Now please look around the courtroom and tell us whether the person whom you referred to as Ate Lourdes is inside the courtroom.

A

She is not around, sir. "Wala si Ate Lourdes."

Q

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Now when your Papa inserted his penis into your sexual organ, in what place or in what house did he do it ?

A

In the house of my Papa, sir.

xxx xxx xxx

FISCAL GARCIA (continuing)

Q

Now you said that you were in a room in the house of your Papa when your Papa inserted his penis into your sexual organ. Now was it day time or night time when it happened?

A

Night time, sir.

Q

Before your papa inserted his penis into your sexual organ and during that time that he was doing it to you do you remember anything that your Papa told you?

A

Yes, sir.

Q

What did he tell you, if any?

A

That he is going to insert his penis in my vagina, sir.

FISCAL GARCIA

May we request, Your Honor, that the answer of the witness in tagalog be made of record.

WITNESS

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A

"Na isusuot niya ang kanyang titi sa aking pekpek."

FISCAL GARCIA

Q

Now when your father has already inserted his penis into your sexual organ did he tell you anything?

A

Yes, sir.

Q

What did he tell you if any?

A

That he is going to insert his penis into my vagina, "pekpek", sir.

Q

When your papa has already inserted his penis into your sexual organ, did you cry?

A

Yes, sir.

Q

So was there anything that your papa did in order to stop you from crying?

A

Yes, sir.

Q

What did he do, if any?

A

He told me to stop sir.

FISCAL GARCIA

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May we request, Your Honor, that the answer in vernacular be made on record. This is the first time we heard that from the child.

WITNESS

A “Tigil na.” sir.

xxx xxx

FISCAL GARCIA

Q

And when you were still crying was there anything that your papa did to you?

A

Yes, sir.

Q

What did he do?

A

He inserted it again, sir.

FISCAL GARCIA

May we request, Your Honor, that the answer in Tagalog be made on record.

WITNESS

A “Nilusot pa”, sir.”[9]

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On the whole, we find her testimony worthy of credence. The rule is that when a rape victim's testimony is straightforward and candid, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit.[10] On the other hand, Charity's failure to identify her father immediately, far from impairing her credibility, bolsters it, because it is not uncommon for young girls to vacillate in such instances when confronted by the face of ravisher, more so when the latter turns out to be her very own father.

Moreover, we cannot see any plausible reason why Charity, with her mother's aid, would institute a baseless criminal case against her very own father. There is no showing that he maltreated or physically abused her.[11] In fact, she admitted that he never scolded her.[12] It is unbelievable that a young barrio lass would concoct a tale of defloration, much less against her very own father, publicly admit having been ravished and her honor tainted, allow the examination of her private parts and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and truly moved to protect and preserve her honor, as well as to obtain justice, for the wicked acts committed against her.[13] Even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to fabricate a story which would put her own father in jail for the most part of his remaining life and drag herself and the rest of her family to a lifetime of shame.[14]

The victim, furthermore, is not a coached witness. Her demeanor on the stand is clear proof of her sincerity and candor. The simplicity in form of her answers and her limited vocabulary[15] do not carry the badge of a scripted testimony but are sure signs that she was narrating the incident in her own words based on her own perception. Her tears add poignancy to verity born out of human nature and experience.[16] Her emotional breakdowns that could only be occasioned by the forced recollection of the sexual violations she experienced from the hands of her own father at such a tender age and quite offensive to her memory bolstered her credibility beyond doubt.[17]

Dragging the person of Isyo Bebon, the brother of Charity's mother, as the possible culprit for the rape only engenders more questions rather than answers for the appellant. If it were true that it was his brother-in-law Isyo who abused his daughter, how come he did not file any complaint against him? Based on the record, it seemed that neither he, nor any member of his family, even tried to confront Isyo regarding such a grave offense. The truth is, aside from his unsubstantiated testimony, he could not present any other evidence that could link Isyo to the crime. Even throughout the length of Charity's testimony, not a single hint or reference was made by the child regarding her uncle. Lest appellant forget, his own counsel admitted during the stipulation of facts that the victim was under his own custody. Quite clearly, appellant's act of floating the name of Isyo as the culprit is a desperate attempt to find a scapegoat to escape culpability.

In the same vein, we are not impressed by the supposed motive of appellant's wife, Norily, in instituting the case at bar and testifying against him. Allegedly, the case at bar is part of his wife's scheming device to preempt him from filing a case of adultery against her. The evidence shows that he and his wife have been estranged since 1989 when he first returned from his work as a seaman. He must have gotten wind of his wife's philandering ways, yet, in those four years which intervened prior to the prosecution of this case in 1993, he did not institute any court action case against her. Indeed, in the course of the trial, no proof of the illicit relationship of his wife with another man was offered.

These imputations made by appellant against her wife are hard to believe because no mother would sacrifice her own daughter, concoct a story of the latter's defloration, allow an examination of her daughter's private parts and subject her to a public trial just to end her relationship with her husband or to retaliate against him for his transgressions.[18] It is unnatural for a parent to use her offspring as an engine of malice, especially if it will subject a daughter to embarrassment and even stigma.[19]

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We likewise find appellant's contention that the victim's testimony on the fact of rape is not consistent with the medical findings and testimony of the gynecologist who examined the victim, to be without basis. The medico-legal report presented as part of the evidence for the prosecution clearly shows that Charity suffered wounds in her sex organ, in the nature of "deep healed hymenal laceration" and other superficial lacerations. Similarly, Dr. Rivera confirmed the accuracy of her findings embodied on the report. Appellant's insistence that if he truly inserted his penis into Charity's vagina, her "vaginal opening should have sustained MASSIVE lacerations that would have extended the whole length and breadth of the pirenaeum, the area or space in the vulva that extends down from the vaginal opening to the anus or anal opening" is bereft of merit. For rape to be consummated, rupture of the hymen is not necessary, nor is it necessary that the vagina sustain a (massive) laceration, especially when the victim is a young girl.[20] Laceration of the hymen, even if considered the most telling and irrefutable physical evidence of sexual assault, is not always essential to establish the consummation of the crime of rape.[21] In the context that it is used in the Revised Penal Code, "carnal knowledge," unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured.[22]

It bears emphasis that the defense advanced by the appellant is wholly anchored on alibi. He claimed that he was abroad in Hongkong at the time the alleged rape happened so there is simply no way that he could have committed the crime. This story was corroborated by his mother and sister. The defense of alibi, we have consistently held, is considered with suspicion and always received with caution, not only because it is inherently weak, but also because it can be fabricated easily.[23]

That he was out of the country while working as a seaman during the time that the rape happened is an allegation which appellant failed to validate by clear and convincing proof. From the outset, appellant was not able to present his passport, seaman's book nor his plane ticket, which would have been the most telling proof that he was indeed out of the country. His excuse that these travel documents and employment papers were lost when he was detained in prison hardly inspires belief. On the contrary, it only creates in our mind the nagging suspicion that since the contents of these papers will not verify his story there was a necessity to suppress them. It taxes our credulity to believe that a man heading for detention would bring such important papers to jail. And, granting in gratia argumenti that they were lost, he could have easily obtained certified true copies of them from the concerned offices.

The testimonies of appellant's mother and sister, intended obviously to back up his account, likewise deserve scant consideration. We have previously held, in a number of decisions, that alibi becomes unworthy where it is established mainly by the accused himself and his relatives.[24] To be sure, it cannot stand in the face of the victim's positive testimony identifying appellant as the author of the unspeakable crime.

Be that as it may, we modify appellant's civil liability. In the appealed decision, the trial court ordered appellant to pay the victim and her mother moral and exemplary damages only. Under existing jurisprudence, the victim is likewise entitled to civil indemnity in the amount of fifty thousand pesos (P50,000.00). Civil Indemnity is mandatory upon the finding of the fact of rape and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of sound discretion.[25] While the award of moral damages is discretionary on the part of the court, the civil indemnity, which is in the nature of actual or compensatory damages is mandatory upon the finding of the fact of rape.[26] Moral damages cannot take the place of civil indemnity.[27]

IN VIEW WHEREOF, the appealed decision is affirmed with the modification that appellant is ordered to pay the victim, Charity Tagun, P50,000.00 as civil indemnity. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, and Ynares-Santiago, JJ., concur.

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[1] Complaint, p. 1; Rollo, p. 7.

[2] She declared that she was five years old at the time she was called to the stand. TSN, August 11, 1993, p. 7.

[3] TSN, August 23, 1993, pp. 6 - 31; TSN, August 25, 1993, pp. 2 - 31.

[4] Sometimes referred to as Norelyn or Norely Tagun.

[5] TSN, August 11, 1993, p. 38.

[6] TSN, January 12, 1994, pp. 2-22.

[7] Decision, Criminal Case No. 93-434, p. 14; Rollo, p. 32.

[8] Brief for the Accused-Appellant, pp. 8-10; Rollo, pp. 53-55.

[9] TSN, August 23, 1993, pp. 6-9; 11-14; 16.

[10] People v. Caratay, 316 SCRA 251 (1999).

[11] See People v. Bation, 305 SCRA 253 (1999).

[12] TSN, June 6, 1996, p. 23.

[13] People v. Quinanola, 306 SCRA 710 (1999).

[14] People v. Sandico, 307 SCRA 204 (1999).

[15] In fact, appellant observed how in her entire testimony, Charity kept using just the words “isinuot” and “nilusot” (into her vagina) to describe what he allegedly did with his penis. Appellant’s Brief, p. 11; Rollo, p. 56.

[16] People v. Sagun, 303 SCRA 382 (1999).

[17] People v. Ramos, 312 SCRA 137 (1999).

[18] People v. Flores, 320 SCRA 560 (1999).

[19] People v. Perez, 319 SCRA 622 (1999).

[20] People v. Quisay, 320 SCRA 450 (1999).

[21] People v. Marcelo, 305 SCRA 105 (1999).

[22] Peole v. Quinanola, supra.

[23] People v. Batidor, 303 SCRA 335 (1999).

[24] People v Paraiso, 319 SCRA 36 (1999).

[25] People v. Marabillas, 303 SCRA 352 (1999).

[26] People v. Banago, 309 SCRA 417 (1999).

[27] People v. De los Santos, 315 SCRA 579 (1999).

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