

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO CAIÑGAT, ACCUSED-APPELLANT.

G.R. No. 137963. February 06, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an automatic review of the Decision of the Regional Trial Court of Capas, Tarlac, Branch 66, in Criminal Case No. 1139 finding accused-appellant Rogelio Caiñgat guilty beyond reasonable doubt of raping his daughter, Rowena Caiñgat, a minor, and imposing upon him the supreme penalty of death. The trial court further ordered accused-appellant to pay the victim the amount of fifty thousand pesos (P50,000.00) “by way of indemnification for moral damages.”

In the criminal complaint, dated October 28, 1996, Rowena charges her father, accused-appellant, as follows:

The undersigned private complainant Rowena Payumo Caiñgat, 14 years, assisted by her guardian-aunt, Dometila Nolasco, after the necessary preliminary investigation conducted by Assistant Provincial Prosecutor Aladin C. Bermudez, Jr., accuses her father, Rogelio Caiñgat of Cub-Cub, Capas, Tarlac, of the crime of Rape, committed as follows:

That on or about the 28[th] day of July, 1996, in the Municipality of Capas, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously with lewd design, have sexual intercourse with her undersigned daughter, Rowena Payumo Caiñgat against the latter’s will and with the said accused taking advantage of his moral ascendancy equivalent to force and intimidation.

Contrary to law.[1]

At his arraignment on April 21, 1997, accused-appellant, who was assisted by counsel de oficio, pleaded not guilty to the crime charged.[2] The prosecution then presented two witnesses: Rowena and Dr. Glothelda Rivera. They testified to the following:

Fifteen-year-old Rowena was six years old when her mother, Lucila Payumo, died. Her father, accused-appellant, did not re-marry. Since then, the two of them lived together in a house in Cub-Cub, Capas, Tarlac.[3]

Late in the evening of July 28, 1996, while Rowena was sleeping in their house, accused-appellant arrived. He was intoxicated and immediately came near Rowena, who was then only half-asleep. He was wearing only his briefs. He awakened Rowena and began to undress her. He told her he was going to kill her. As accused-appellant “grabbed” her, Rowena was forced to lie down (napahiga ako). He kissed her, removed his briefs, and, according to her, he “raped” her. After the incident, Rowena left their house and told her aunt, Dometila Nolasco, accused-appellant’s sister, what happened. Dometila brought Rowena to the chapel and forthwith reported the incident to the police.[4]

In her sworn statement given to the police, Rowena stated that she was filing a complaint against her father as he

had been raping her since she was eight years old until she was fourteen (panggagahasa sa akin mula noong ako ay walong gulang pa lamang hanggang ngayong labing-apat na taon na po ako). [5] Rowena confirmed this statement on the witness stand when she testified that accused-appellant had raped her two (2) times prior to July 28, 1996.[6]

On cross-examination, Rowena testified that only she and her father slept in their one-room house that had no divider. She did not shout when her father raped her because she was afraid.[7]

Carlos Caiñgat, accused-appellant's first cousin, accompanied Rowena[8] to Dr. Glothelda Rivera who, after examining her, issued a medical certificate, the pertinent portion of which states:

GENITALIA:

=

slightly prominent mons pubis with scanty, black, curly pubic hairs

=

hymen; (+) healed laceration, complete at 3 o'clock

=

labia minora noted to be gaping

=

'U' shaped fourchet

=

admits 2 fingers snugly at introitus.[9]

According to Dr. Rivera, who claimed that a psychiatrist referred Rowena to her on September 4, 1996 "because of the possibility of incest," the 3 o'clock "complete laceration" in her hymen was possibly caused by "sexual abuse." However, she could not say whether a penis or any other hard object, including a finger, caused the laceration. She opined that the laceration might have been inflicted "more than a week" before the examination or possibly on July 28, 1996 because of its rounded edges and scars.[10]

Dr. Rivera added that Rowena, who was then under treatment for psychosis, was "not very cooperative." When Dr. Rivera verified from Rowena if she was indeed abused by her father, she replied that her father "was trying to molest her." However, Dr. Rivera did not find Rowena to be psychotic as she answered her questions "intelligently," although according to Dr. Rivera, she had to repeat the questions several times before Rowena could give her answers. Rowena appeared then to be "very afraid." [11]

Only accused-appellant testified in his own defense. A laborer, shoemaker and widower, accused-appellant admitted that Rowena is his only child with his deceased common-law wife although he had children with another woman.[12] On July 28, 1996, Rowena was staying with his sister, Dometila Nolasco. Dometila's house was beside his own. On the evening of that date, he fetched his sister who was selling balut at the market. It was 1:00 a.m. when they returned home. Rowena was in his house, sleeping on her bed. He told her to eat the balut given by her aunt, as she had been awakened by the noise of his cart. His sister had transferred Rowena to his house at 1:30 a.m. and she slept on the folding bed three (3) paces away from his own folding bed. Rowena was eating balut when he slept. He woke up at 7:00 the next morning while Rowena slept until 10:00 a.m.[13]

Accused-appellant vehemently denied that he raped Rowena. According to accused-appellant, Rowena filed the rape case against him because she “was not in her right mind.” She would laugh and be in a state of shock (tulala) sometimes. One morning, Rowena told him, “Tata, o, bili tanas. He-he-he,” which meant that she wanted him to buy her an apple. That evening of July 28, 1996, when he gave her balut, Rowena said, “He!”[14]

He discovered that Rowena was mentally disturbed on June 24, 1996 when his sister brought her to his house. He was mad at his sister. Rowena was going to school and he would give her allowance. One time, he asked her why she became mentally disturbed. Rowena told him: “Tata, pinainom po ako ng Pepsi Cola sa tapat po ng eskuwela namin” (Father, somebody asked me to drink Pepsi Cola in front of our school). He asked her to identify the person who gave her the drink but she could not tell him who that person was. Rowena also told him that there was an old man on board a car but when he asked her about the plate number of the car, Rowena answered: “I don’t remember. He-he-he.” After that, accused-appellant could no longer talk to Rowena.[15]

Accused-appellant made inquiries in Rowena’s school about the person who gave her a drink but nobody knew that person. After June 28, 1996, he “took full responsibility” of his daughter. He was mad at “them” (his sister) because when his sister took his daughter, Rowena was still in her right mind; when her sister returned Rowena to him, she was already “suffering from mental disorder.” Hence, on July 15, 1996, before taking Rowena to the hospital, accused-appellant asked “them” if they maltreated his daughter while she was in “their” custody. His sister got angry. However, at that time, Rowena was in his sister’s house because he had asked her to look after Rowena.[16]

Accused-appellant was detained on September 17, 1996 but he did not know the reason for his detention. Neither did he know why Dometila and his daughter would file the rape case against him. Feeling embarrassed by the accusation against him, accused-appellant went to the office of the barangay captain for advice. The barangay captain told him to go to the police station. He did as told but he could not confront Rowena because Dometila had hidden her from him since the first Saturday of September 1996.[17]

He was at the police station at 2:00 p.m. on September 17, 1996, when a person angrily told him to affix his signature on an affidavit. When shown the counter-affidavit, dated October 7, 1996, that bore his signature, accused-appellant initially denied that it was his. Later, he claimed that he was forced to sign the document.[18]

On cross-examination, accused-appellant again admitted that Rowena is his daughter, that she was already sixteen (16) years of age at that time, and that on July 28, 1996, she was only fourteen (14) years old. His first wife was Josefina Castro but she was not Rowena’s mother. He and Rowena’s mother, Lucila, did not get married. Rowena was born on the eighth year that they (accused-appellant and Lucila) were living together. In 1988, Lucila died; Rowena was then six years old. He and Lucila’s mother, Fidela Tiamzon Canono, took care of Rowena. They stayed with his sister. Later, accused-appellant built a small hut near Dometila’s house but Rowena did not stay with him yet. She would just pass by his hut to ask if he had eaten. On June 24, 1996, after five years that Dometila had been taking care of Rowena, she brought Rowena to accused-appellant. She said, “Rolly, Rowena, your daughter will stay with you because right now she is not in her right mind. My daughter-in-law was afraid of her, she might kill her two kids.”[19]

In the evening of June 28, 1996, he was waiting for his sister because she would pay him P10.00 every time he delivered balut. Rowena was at home then because he took care of her whenever he was home. They slept in their respective folding beds.[20]

After the prosecution and the defense presented their respective evidence, the trial court rendered judgment convicting accused-appellant for the crime of rape and sentencing him to death. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused, ROGELIO CAIÑGAT, guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code as amended.

Accordingly, by virtue of the amendment therefor under Republic Act No. 7659 and as further amended in Republic Act No. 8353, said accused is hereby sentenced to suffer the penalty of DEATH.

Likewise, the accused is hereby ordered to pay the victim, Rowena Caiñgat, the amount of P50,000.00 by way of indemnification for moral damages.

SO ORDERED.[21]

In this automatic appeal, accused-appellant raises the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT ROGELIO CAIÑGAT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DEFINED AND PENALIZED UNDER ARTICLE 335 OF THE REVISED PENAL CODE, AS AMENDED, IN RELATION TO REPUBLIC ACT NOS. 7659 AND 8353.

II

THE COURT A QUO ERRED IN IMPOSING THE CAPITAL PUNISHMENT OF DEATH.[22]

In determining the guilt of the accused in rape cases, the Court is guided by the following considerations: (a) that an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime which usually involves two persons, the testimony of the complainant must be scrutinized with extreme caution; and (c) that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence of the defense.[23] In all criminal prosecutions, without regard to the nature of the defense which the accused may raise, the burden of proof remains at all times upon the prosecution to establish his guilt beyond reasonable doubt.[24]

Further, it is the prosecution's duty to prove each and every element of the crime charged in the information to warrant a finding of guilt for the said crime or for any other crime necessarily included therein.[25]

As defined by Article 335 of the Revised Penal Code, as amended, the law then in effect at the time of the commission of the crime, rape is committed as follows:

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

- By using force or intimidation.
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or demented.

The crime of rape shall be punished by reclusion perpetua.

x x x

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, 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;

x x x

To sustain a conviction under the above provision of law, the prosecution must allege and prove the basic elements of: 1) sexual congress; 2) with a woman; 3) by force and without consent, and in order to warrant the imposition of the death penalty, the additional elements that 4) the victim is under eighteen (18) years of age at the time of the rape; and 5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[26]

The Court is mindful of the general rule that factual findings by the trial court deserve a high degree of respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could alter the result of the case.[27]

A judicious review of the records of this case shows that the trial court did overlook some material facts and circumstances warranting the modification of its decision. The prosecution has failed to discharge its onus of proving, beyond reasonable doubt, the guilt of accused-appellant for the crime of rape. Specifically, the evidence presented by the prosecution does not conclusively establish the first element of carnal knowledge. Despite her lengthy testimony, Rowena failed to mention how the alleged sexual intercourse was consummated. There was a total absence of proof that there was the slightest penetration of the female organ, not even the barest subliminal touch. When her testimony reached the critical point to demonstrate carnal knowledge, all that she said was that she was “raped” without even a modicum of details how the act was done.

In convicting accused-appellant, the trial court relied heavily on the testimony of Rowena that accused-appellant “raped” her. She testified as follows:

Q

Do you know of any unusual incident that happened on July 28, 1996?

A

There was, sir.

Q

What is that unusual incident?

A

I was sexually assault(ed) by my father, sir.

Q

At about what time (did) your father sexually assault you on July 28, 1996?

A

At nighttime, sir.

Q

How did your father started (sic) to sexually abused (sic) you?

A

At first he removed my dress, sir.

Q

And then what did he do?

A

Thereafter he kissed me, sir.

Q

After that?

A

He had carnal knowledge on (sic) me, I was wet on the lower portion of my body, sir.

Q

Where were you when your father did that to you?

A

In our house, sir.

Q

Your house at Cub-cub, Capas, Tarlac?

A

Yes, sir.

Q

On that night who were with you and your father at that house?

A

I was only the one, sir.

x x x

Q

On July 26, 1996 (sic) was your father intoxicated?

A

Yes, sir.

Q

When you slept where do you sleep?

A

Inside our house, sir.

Q

Do you have a separate room from that of your father?

A

None, sir.

Q

When you sleep, do you sleep beside your father?

A

Yes, sir.

Q

Since the time your mother died you were sleeping beside your father?

A

Yes, sir.

Q

On July 28, 1996 when your father started to sexually assault you, have you slept already or not?

A

I was able to sleep a little already, sir.

Q

And why did you wake up?

A

I was awoken(ed) when he went near me, sir.

Q

By going near you, what do you mean?

A

He went near me and undressed me, sir.

Q

What was your position at that time when your father went near you?

A

I was lying down, sir.

Q

How about he (sic), what was his position at that time he was removing your dress?

A

He had no shirt on, sir.

Q

How about his pants, was he with pants then?

A

None anymore, sir.

Q

How about a brief?

A

Yes, sir.

Q

Then when he removed your dress what did he do?

A

That was at the time he started kissing me, sir.

Q

At the time he was kissing you, he is still wearing his brief?

A

Yes, sir.

Q

At what point did your father removed (sic) his brief?

A

After he kissed me, sir.

Q

And when he removed his brief, what did you do?

A

That is the time he raped me, sir.

COURT INTERPRETER:

Witness pointed to her lower private part.

FISCAL A. YUMUL:

Q

When you noticed your father is going near you and removed your dress, what did you do?

A

I was afraid, sir.

Q

And being afraid what did you do?

A

I left away (sic) the place where I was at that time, sir.

Q

When you were leaving that place what did your father do?

A

He raped me, sir.

COURT:

How did your father rape you?

WITNESS:

He grabbed me and as a result I was laid down, sir.
'Napahiga ako.' That was the time he raped me already, ma'am.

COURT:

Okay, proceed.

FISCAL A. YUMUL:

Q

When you woke up because your father went to you and he was undressing you, was he telling you anything?

A

Yes, sir.

Q

What was he telling you?

A

He told me that he is going to kill me, sir

Q

Why will he kill you?

A

That is what he told me, sir.

COURT:

Was that the first time that you were raped by your father?

WITNESS:

A

No, ma'am.

FISCAL A. YUMUL:

Q

How many times have your father raped you before this date July 28, 1996?

A

Two (2) times, sir.

Q

And when where (sic) these two (2) times that your father raped you?

A

I could not remember anymore, sir.

Q

Now, after you were raped on July 28, 1996 what did you do?

A

I cried, sir.

Q

And did you tell anybody of that incident?

A

Yes, sir.

Q

To whom did you tell that incident?

A

To my relatives, sir.” (Emphasis supplied.)([28])

Thus, the prosecution failed to propound questions that would have proved beyond reasonable doubt that accused-appellant’s penis, at the least, reached the labia majora of Rowena’s vagina. In *People vs. Tolentino*,[29] the Court held:

There was nothing from RACHELLE’S testimony that proved that TOLENTINO’S penis reached the labia of the pudendum of RACHELLE’S vagina. As translated, she only said: “He placed his sex organ to my sex organ, sir.” This was the translation of the word “binubundol-bundol.” And when asked to explain what she meant by it, she answered: “He was trying to force his sex organ into mine, sir.”

The prosecution did not ask her the appropriate questions to get some more important details that would demonstrate beyond any shadow of doubt that TOLENTINO’S penis reached the labia of the pudendum or the lips of RACHELLE’S vagina. It should have, for instance, asked whether TOLENTINO’S penis was firm and erect or whether RACHELLE’S legs were spread apart to bring us to the logical conclusion that, indeed, TOLENTINO’S penis was not flabby and had the capacity to directly hit the labia of the pudendum or the lips of RACHELLE’S vagina. There is paucity of evidence that the slightest penetration ever took place. x x x[30]

As it is, the bare statements of Rowena that she was “sexually assaulted” or “raped” by accused-appellant are not sufficient to establish his guilt for the crime of rape. Said statements fall short of the requirement of the law on the quantum of evidence required in the prosecution of criminal cases.[31]

Rowena’s use of the general terms of “sexual assault,” “rape” and “carnal knowledge” in her testimony is not sufficient to establish the guilt of accused-appellant for the crime of rape. In *People vs. Campuhan*,[32] the Court had the occasion to extensively discuss what constitutes consummated rape under Article 335 of Revised Penal Code thus:

x x x We have said often enough that in concluding that carnal knowledge took place, full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary; the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. But the act of touching should be understood here as inherently part of the entry of the penis into the labias of the female organ and not mere touching alone of the mons pubis or the pudendum.

x x x

The pudendum or vulva is the collective term for the female genital organs that are visible in the perineal area, e.g., mons pubis, labia majora, labia minora, the hymen, the clitoris, the vaginal orifice, etc. The mons pubis is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the labia majora or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the labia majora is the labia minora. Jurisprudence dictates that the labia majora must be entered for rape to be consummated, and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the mons pubis of the pudendum is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, i.e., touching of either labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.[33]

The medical certificate and the testimony of Dr. Rivera likewise do not establish to a degree of moral certainty the guilt of accused-appellant for the crime of rape. Dr. Rivera could not categorically say that the laceration on the hymen of Rowena was caused by the penetration of accused-appellant's penis. When asked whether the laceration on Rowena's hymen was caused by sexual abuse, Dr. Rivera could only answer: "It is possible, sir, but I could not really say that the penis penetrated because I have not seen it; but it is possible." [34] The Court cannot make this statement the basis for holding accused-appellant liable for rape because in criminal cases, speculation and probabilities cannot take the place of proof required to establish the guilt of the accused beyond reasonable doubt. Suspicion, no matter how strong, must not sway judgment. [35]

While we find that the crime of rape has not been established, the evidence advanced by the prosecution fully supports the conclusion that accused-appellant committed the crime of acts of lasciviousness.

Accused-appellant insists that Rowena was suffering from mental imbalance at the time she testified before the trial court. As such, she did not testify "voluntarily, knowingly and intelligently" and "on her own free will and without being exploited by any other persons such as her aunt with whom the accused had a grudge prior to the filing of this case." [36]

It is well settled that when it comes to the issue of credibility of witnesses, the trial court is in a better position than the appellate court to properly evaluate testimonial evidence having the full opportunity to observe directly the witnesses' deportment and manner of testifying. [37] The trial court observed that Rowena did not show a trace of mental affliction because she testified coherently and intelligently:

While the record of the case will disclose that the private complainant may be said to be mentally imbalanced at the time she gave her testimony, it is nonetheless observed by this Court that such mental condition of the complainant did not deter her from giving a rational and coherent testimony nor in any way affected her intelligence. In fact, no one could even tell that she is mentally disturbed with the way she laid down her testimony even during her cross-examination. Her answers to the questions propounded to her were answers expected from witnesses of normal disposition, showing that she possesses the same perception as any other ordinary person of sufficient intelligence. Notwithstanding her mental condition, she was able to make known and transmit her perception to others, not only from the questions thrown by the Court but also those from the public prosecutor and the defense counsel. [38]

Indeed, the trial court would not have convicted accused-appellant had it believed that the sole prosecution eyewitness was suffering from mental impairment that seriously affected her competence as a witness. Neither is it true that Dr. Rivera corroborated the trial court's finding on Rowena's mental state simply because she used the word "coerce" in referring to the manner by which she was able to elicit information from Rowena. The pertinent portions of Dr. Rivera's testimony that have a bearing on Rowena's competence as a witness state:

COURT:

Q

You said she was under psychosis examination?

A

Yes, your Honor.

Q

At the time you were conducting this examination, per interview as you mentioned, did you find her to be in

(sic) case of psychosis?

A

No, Your Honor.

Q

You mean, she can answer your questions intelligently?

A

Yes, your Honor, but I have to coerce her.

Q

What do you mean by “coercing” her?

A

I have to repeat my questions several times before she answers me, your Honor.

Q Does that mean that she cannot understand your question?

A And she seems to be very afraid. (Emphasis supplied.)[39]

As shown above, Dr. Rivera unequivocally stated that Rowena was not suffering from psychosis. Thus, other than the mere mention of the word “psychosis” in Dr. Rivera’s testimony and accused-appellant’s self-serving claim that his daughter was mentally disturbed, there is no independent evidence that would lead to the conclusion that Rowena was an incompetent witness due to her abnormal mental state.

Even granting that she was indeed mentally disturbed when she testified, mental incapacity is not an absolute basis for the disqualification of a witness:

Unsoundness of mind does not per se render a witness incompetent; one may be medically or metaphysically insane, yet be capable in law of giving competent testimony in the trial of a case. The general rule is that a lunatic or a person affected with insanity is admissible as a witness if he has sufficient understanding to apprehend the obligation of an oath and is capable of giving a correct account of the matters which he has seen or heard with respect to the questions at issue.

It is now held universally that the insanity or intellectual weakness of a witness, no matter what form it assumes, is not a valid objection to his competency if, at the time he is testifying, he has mental capacity to distinguish between right and wrong, so far as the facts in issue and his testimony thereon are involved, understands the nature and obligation of an oath, and can give a fairly intelligent and reasonable narrative of the matters about which he testifies.[40]

Hence, in *People v. Padilla*,^[41] the Court held that a mental retardate is not, by reason of such handicap alone, disqualified from testifying in court. What matters is that the witness “can perceive, and perceiving, can make known (his or her) perception to others.”^[42] The issue of competence of a witness to testify rests largely within the discretion of the trial court.^[43] In this case, the trial court held that Rowena was a competent witness because she was “able to make known and transmit her perception to others, not only from the questions thrown by the

Court but also from the public prosecutor and the defense counsel.”[44] There is no reason for this Court to deviate from this particular finding of the trial court.

Thus, as earlier stated, notwithstanding the prosecution’s failure to prove accused-appellant’s guilt for rape, the Court holds that there is sufficient evidence to convict him for acts of lasciviousness under Article 336 of the Revised Penal Code. The elements of the crime are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force and intimidation or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.[45] Although the information was for qualified rape, accused-appellant can be convicted of acts of lasciviousness because the crime of acts of lasciviousness is included in rape.[46]

Rowena clearly testified that, wearing only his briefs, accused-appellant approached her while she was half-asleep and kissed her. With lewd design, accused-appellant grabbed Rowena and then undressed her. He also threatened to kill her. All the elements of the crime of acts of lasciviousness are therefore present and have been sufficiently established.

The penalty for acts of lasciviousness is prision correccional.[47] Under Article 15 of the Revised Penal Code, relationship is one of the alternative circumstances and in the crimes of rape under Article 335 and acts of lasciviousness under Article 336 thereof, relationship is aggravating.[48] Article 64(3) of the same Code provides that where the penalties prescribed by law contain three periods and there is one aggravating circumstance, the court shall impose the penalty prescribed by law in its maximum period. Applying said provision, the penalty of prision correccional in its maximum period or 4 years, 2 months and 1 day to 6 years should be imposed upon accused-appellant. Under the Indeterminate Sentence Law, said penalty shall constitute the maximum term, while the minimum shall be within the range of the penalty next lower to that prescribed by the Code for the offense, i.e., arresto mayor or 1 month and 1 day to 6 months. Accused-appellant is hereby sentenced to suffer the penalty of 6 months of arresto mayor, as minimum, to 6 years of prision correccional, as maximum.

WHEREFORE, the Decision of the Regional Trial Court, Branch 66 of Capas, Tarlac in Criminal Case No. 1139 is hereby MODIFIED. Accused-appellant Rogelio Caiñgat is found guilty beyond reasonable doubt of the crime of acts of lasciviousness, as defined and penalized under Article 336 of the Revised Penal Code, and sentenced to suffer the indeterminate penalty 6 months of arresto mayor, as minimum, to 6 years of prision correccional, as maximum. Accused-appellant is likewise ordered to pay the victim, Rowena Caingat, the amount of P50,000.00 as moral damages plus costs of suit.

SO ORDERED.

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

[1] Records, p. 1.

[2] Ibid. at 13.

[3] TSN, September 29, 1997, p. 5.

[4] Ibid. at 5-13.

[5] Exhibit “A”; Folder of Exhibits II, p. 1

- [6] See Note 3 at 12-13.
- [7] TSN, November 17, 1997, pp. 2-5.
- [8] TSN, September 29, 1997, p. 18.
- [9] Exhibit "B"; Folder of Exhibits II, p. 2.
- [10] TSN, May 26, 1998, pp. 4-5.
- [11] Ibid, pp. 8-9.
- [12] TSN, August 24, 1998, pp. 4 & 21.
- [13] Ibid, pp. 4-9.
- [14] Id., at 10-11.
- [15] Id., at 12-13.
- [16] Id., at 14-16.
- [17] Id., at 17-20.
- [18] Id., at 23-24.
- [19] TSN, October 5, 1998, 3-7.
- [20] Id., at 7-9.
- [21] RTC Decision, p. 11.; Rollo, p. 22.
- [22] Rollo, p. 39.
- [23] People v. Mariano, 345 SCRA 1 (2000); People v. Tacipit, 242 SCRA 241 (1995).
- [24] Ibid.
- [25] People vs. Lopez, 313 SCRA 114 (1999).
- [26] People vs. Bayya, 327 SCRA 771 (2000); People vs. Silvano, 309 SCRA 362 (1999).
- [27] People vs. Malbog, 342 SCRA 620 (2000); People vs. Jagolingay, 280 SCRA 768 (1997).
- [28] TSN, September 29, 1997, pp. 5-13.

[29] 308 SCRA 485 (1999).

- [30] Id., at 494.
- [31] People vs. Laguerta, 344 SCRA 453 (2000).

[32] 329 SCRA 270 (2000).

- [33] Id., at 279-282.
- [34] See Note 10.
- [35] People vs. Tayag, 329 SCRA 491 (2000); People vs. Balderas, 276 SCRA 470 (1997).

[36] Appellant's Brief, pp. 7-8.

[37] *People vs. Adajio*, 343 SCRA 316 (2000).

[38] RTC Decision, p. 8; Rollo, p. 19.

[39] TSN, May 26, 1998, p. 9.

[40] VII FRANCISCO, *THE REVISED RULES OF COURT IN THE PHILIPPINES*, Part I, 1997, ed., p. 236.

[41] 301 SCRA 265 (1999).

[42] Sec. 20, Rule 130, Rules of Court.

[43] VII Francisco, *supra*, at p. 237 citing 97 C.J.S. 446.

[44] RTC Decision, p. 8; Rollo, p. 19.

[45] REYES, 2 REVISED PENAL CODE 781 (1993).

[46] *People vs. Gianan*, 340 SCRA 477 (2000); *People vs. Contreras*, 338 SCRA 622 (2000).

[47] Article 336, REVISED PENAL CODE.

[48] *People vs. Fundano*, 291 SCRA 356 (1998).

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