PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO RIVERA, ACCUSED- APPELLANT.

G.R. No. 139180. July 31, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a review pursuant to Rule 122, §10 of the Rules of Criminal Procedure of the decision,[1] dated June 22, 1999, of the Regional Trial Court, Branch 49, Guagua, Pampanga, finding accused-appellant Rolando Rivera guilty of rape and sentencing him to suffer the penalty of death and to pay the offended party, Erlanie Rivera, the sum of P75,000.00 as compensatory damages and P50,000.00 as moral damages.

The information against accused-appellant charged--

> That sometime in the month of March 1997, in barangay Santiago, municipality of Lubao, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ROLANDO RIVERA, by means of violence, threat and intimidation, did then and there willfully, unlawfully and feloniously, and maliciously succeeded in having carnal knowledge [of] his 13 year old daughter, Erlanie D. Rivera, against the latter's will and without her consent.
>
> Contrary to law.[2]

When the information was read to him in the local dialect (Pampango) during his arraignment on September 30, 1997, accused-appellant, duly assisted by counsel de oficio, pleaded not guilty to the crime charged,[3] whereupon trial was held.

The prosecution presented as its witnesses complainant Erlanie Rivera, her aunt, Marietta Pagtalunan, and Dr. Demetria Barin, who conducted the physical examination of complainant.

Complainant Erlanie Rivera testified that sometime in March 1997, her younger sister, Zaira,[4] was taken by their parents to the Escolastica Romero Memorial Hospital in Lubao, Pampanga. Complainant's mother stayed with her sister in the hospital, but her father, herein accused-appellant, went back home to Santiago, Lubao, Pampanga. At around 11 o'clock in the evening of the same day, complainant was awakened as accused-appellant started kissing her and fondling her breasts. Complainant tried to resist by kicking and pushing accused-appellant, but her efforts were to no avail. Accused-appellant removed her shorts and panty, touched her private parts, and then had sexual intercourse with her. After he was through with her, accused-appellant told complainant not to tell anyone what had happened or he would kill complainant's mother and sister. Hence, when her mother came home the following day, Erlanie did not tell her what had happened because she was afraid of accused-appellant.

On April 9, 1997, however, Erlanie, in the presence of her mother, told her aunt, Marietta Pagtalunan, and her grandmother, Maxima Payumo, that she had been raped by accused-appellant. For this reason, she was referred to Dr. Barin for physical examination. She also executed a sworn statement before the police of Lubao, Pampanga.[5]

Erlanie testified that she became pregnant as a result of the rape committed against her by accused-appellant, but the pregnancy was aborted.[6] On cross-examination, she said she was 13 years old at the time of her testimony, the second child in the family. She said that her parents were not on good terms with each other and that she knew that her father had a mistress. Atty. Mangalindan, then defense counsel, questioned Erlanie about other supposed acts of molestation committed by accused-appellant against her previous to the rape subject of the present case, but, upon objection of the prosecution, the trial court disallowed the question on the ground that it concerned matters not covered by her direct examination.[7]

Erlanie testified that her mother, grandmother, aunt, and a certain Nora Baluyut were present when she made her sworn statement before the police. She said that her father raped her only once, sometime in March 1997. She could not remember the exact date when she was raped by accused-appellant, but she did remember that the same took place in March as her sister, Zaira, was hospitalized at the time. When the rape occurred, her younger brother and sister were in their house asleep. She did not tell her mother after the latter had returned home that she had been raped by accused-appellant because she was afraid of her father who had threatened her. After the rape, accused-appellant would only come home on Sundays.[8]

Questioned further on cross-examination, Erlanie said that she gave her sworn statement before the police and that her answers to questions asked during her direct examination were freely given without coaching by anyone. She could understand Tagalog, the language used in her sworn statement. She told the court that she struggled against accused-appellant, kicking and pushing him, but she was overpowered by her father. At that time, Erlanie's younger sister, Corazon, was lying beside her, but Erlanie did not shout even when her father succeeded in penetrating her. Erlanie could not remember how long the sexual act took place, but she felt something like urine come out of her father's penis after he was finished with her. Erlanie testified that she was 12 years old when she was raped by her father.[9]

On re-direct examination, when asked about the discrepancy between her testimony that her mother returned home only the day after the rape and her statement in her affidavit that accused-appellant slept beside her mother after the rape, Erlanie replied that she made a mistake as the incident narrated in her affidavit referred to a different occasion when no rape was committed against her by accused-appellant.[10]

The next witness for the prosecution was Marietta Pagtalunan, complainant's aunt and the sister of complainant's mother, Evangeline. Marietta corroborated Erlanie's testimony that the latter told her sometime in April 1997 that she had been raped by accused-appellant. Marietta said she took complainant to Dr. Barin, who examined complainant.[11]

Dr. Demetria Barin was Chief Physician of the Escolastica Romero District Hospital. Her findings are as follows:

> P.E. FINDINGS:
>
> - No signs of external Physical Injuries
>
> I.E. FINDINGS:
>
> HYMEN - healed laceration at 3:00 o'clock
> VAGINA - Admits one finger with ease two fingers with difficulty
>
> UTERUS - not enlarged
> LMP - March 3, 1997
> Pregnancy Test (+)[12]

Dr. Barin testified that on April 10, 1997, she examined complainant Erlanie Rivera and found that the victim had

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an injury in the hymen at the 3 o'clock position which could possibly have been caused by the insertion of a hard object, such as a male organ. Dr. Barin testified that complainant Erlanie went back to see her on May 2, 1997 because she suffered from vaginal bleeding indicative of a threatened abortion. She said that she found that complainant was then pregnant. Upon examination of the patient at that time, Dr. Barin found that abortion had not yet taken place and prescribed medicines for the complainant. Erlanie was subjected to another pregnancy test on May 13, 1997, but the result was negative. Dr. Barin stated that the vaginal bleeding suffered by complainant could have caused the abortion of the fetus.[13]

Thereafter, the defense presented its evidence. Accused-appellant, his sister, Concepcion Sayo, and Natividad Pinlac, Records Officer of the Escolastica Romero District Hospital, were presented as witnesses.

Accused-appellant denied that he raped Erlanie Rivera. He alleged that the rape charge was filed against him because his wife, Evangeline, had a paramour and resented him because he hurt her. He explained that he saw his wife talking with another man in their house and beat her up on April 1, 1997 because he heard that she had a lover. He also said that his wife was angry with him because he had a mistress who stayed in their house for three weeks. He further stated that his wife's relatives were likewise angry with him because he caused the lot owned by his father-in-law in Santiago, Lubao, Pampanga to be registered in his name. He said that he was compelled to sign a waiver of his rights over the land owned by his parents-in-law.[14] The defense presented a letter to accused-appellant written by his wife, who was asking him to sign a document so that she could attend to it before he got out of prison.[15]

The defense also offered as evidence a document, designated as Waiver of Rights,[16] signed by accused-appellant, in which he acknowledged that he was a tenant of a parcel of land and that he waived and voluntarily surrendered his right over the said landholding to the "SMPCI," recommending that a certain Ponciano Miguel be given the land to work on the same. The document was identified by accused-appellant in open court. He said that Ponciano Miguel was a first cousin of his wife and that he signed the document because his wife's relatives promised him that he would get out of prison after signing the document.[17]

Another witness for the defense was Concepcion Sayo, accused-appellant's sister, who testified that in March 1997, accused-appellant lived with her family in Malawak, Bustos, Bulacan, to help her husband operate a fishpond. She said that accused-appellant stayed in their house during the entire month of March, except in March 19, 1997 when he stayed with their sister, Perla, in Tibagan, Bustos, Bulacan.[18]

The last defense witness was Natividad Pinlac, Records Officer of the Escolastica Romero District Hospital, who identified[19] a certification, dated April 29, 1999, in which it was stated that Zaira Rivera was confined at that hospital from March 1 to March 2, 1997.[20]

On June 22, 1999, the trial court rendered a decision, the dispositive portion of which stated:

> WHEREFORE, the court finding the accused guilty beyond reasonable doubt of the crime of rape as charged. For having violated Article 335 of the Revised Penal Code, as amended by Republic Act 7659, with the attendant circumstances that the victim is under eighteen (18) years of age and the offender is the father of the victim and absent any circumstance that could mitigate the commission thereof, accused is hereby sentenced to suffer the supreme penalty of death by lethal injection.
>
> In line with established jurisprudence, said accused is also ordered to indemnify the offended party Erlanie Rivera in the sum of P75,000.00 as compensatory damages and P50,000.00 as moral damages.
>
> SO ORDERED.[21]

Hence, this appeal. Accused-appellant contends that:

- The lower court failed to observe the constitutional right of the Accused-Appellant to due process and right to counsel;

- The lower court failed to consider the evidence of the Accused-Appellant.[22]

I. Accused-appellant invokes his right to due process of law. He claims that he was denied the same because: (a) the trial judge disallowed his lawyer from cross-examining Erlanie Rivera concerning the latter's sworn statements on the ground of irrelevance and immateriality; (b) the trial court denied the motion made by accused-appellant's counsel de oficio to postpone the cross-examination of Dr. Barin, the examining physician, because of which the said counsel consequently waived the cross-examination of Dr. Barin; (c) the judge propounded numerous questions to accused-appellant during his cross-examination by the prosecutor; and (d) the trial court's decision was promulgated just one day after accused-appellant submitted his memorandum.

Procedural due process simply means that a person must be heard before he is condemned. The due process requirement is a part of a person's basic rights, not a mere formality that may be dispensed with or performed perfunctorily.[23] Considering both the evidence and the law applicable to this case, we hold that accused-appellant has been accorded his right to due process.

A. One basis for accused-appellant's contention that he was denied due process is the refusal of the trial judge to allow Atty. Mangalindan's questions concerning the other alleged acts of molestation committed by accused-appellant against complainant. Accused-appellant argues that no legal ground exists for the trial court's ruling.

The transcript of stenographic notes concerning this incident shows the following:

ATTY. MANGALINDAN:

Q

You mentioned in your testimony that you were molested by your father since 1996.

COURT:

Are you referring to a chain of events because police station you are referring is something there are two places this girl testified that she was raped, you referred to us Acts of Lasciviousness and she did not testified about that, that is another case with another Court, we are only trying here a rape case that is only they you never mention. Only on the matters that she testified (sic).

ATTY. MANGALINDAN:

But this is also related to the rape case your Honor because I will confront it with another form of a question.

ATTY. MANGALINDAN:

Q

Prior to this incident, were you molested by your father?

PROSECUTOR SANTOS:

Immaterial, your Honor, whatever acts w[ere] done by the accused is not a subject of the case at bar.

COURT:

Let us confine [questioning] to the complaint at bar which is a rape case.

ATTY. MANGALINDAN:

This is related to the incident because we are here your Honor to prove, we are trying to discredit her testimony. We will just direct our question touching on the direct examination.

COURT:

Only on the matters that she only testified that is only thing you can cross-examine. Only matters testified which is only a rape case let us not dwell the Court knows there are other cases Acts of Lasciviousness pending in the lower Court at the proper Court otherwise if I will allow you to ask questions on other matters specially I know you are pinpointing the Acts of Lasciviousness you are prolonging this case here (sic).

ATTY. MANGALINDAN:

I am trying to discredit the witness as one where the credibility as witness here your Honor is very important. I stated before our main cross-examination is the accused is not a plan in such case, although I do sympathize (sic). We would like to propound question that will discredit her as witness and a complainant not with her testimony alone. Our center of cross-examination is to discredit her as complaining witness that is why our question may not be limited to be accepted under the rule of cross-examination your Honor the cross-examination your Honor the cross-examiner is not limited on the direct-testimony of the witness but he can propound questions which may petition or destroy the credibility of the witness that is our view point (sic).

PROSECUTOR SANTOS:

We cannot dispute the right of accused to discredit or to adopt our credibility of our witness, but it should be done in the proper way, not to ask immaterial questions which are not related.

ATTY. MANGALINDAN:

The rule for cross-examination insofar as to destroy the credibility of the witness is not only limited to what the Honorable Fiscal we came approach of so many cross-examinations goes allow your Honor under the rules of Court insofar as this case is related to the present case we are trying, this is very related because even the witness I have transcript in my hand, testified not only the rape case your Honor she had testified by direct-examination the preparatory acts before the testimony of rape that she was been molested early, finger of the father, this were testified through by the witness, it is here direct-testimony it is not limited (sic).

PROSECUTOR SANTOS:

Prior to this incident were you molested by your father, obviously your Honor the question is not relevant.

ATTY. MANGALINDAN:

Your Honor please I'm very disagreeable (sic), I have not with me the transcript but I have read that you [can] ask questions concerning the rape case.

COURT:

A question referring to events prior to the complaint at bar.[24]

The trial court later issued an order, dated December 9, 1997, the pertinent parts of which provided:

After private complainant testified on direct-examination, counsel for accused attempted to cross-examine her on matters relevant to the complaint for Acts of Lasciviousness which was objected to by Asst. Provincial Prosecutor Arturo G. Santos on the ground that private complainant did not testify on that matter but limited her testimony on the rape case only. Counsel for the accused argued that although that is correct nonetheless because [of] the sworn statement executed by private complainant identified by said witness in her direct

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> examination and marked as Exhibit "C" for the prosecution, he is at liberty to cross-examine the witness on all matters stated in her sworn statement including that portion touching on the acts of lasciviousness subject matter of another case before another court.
>
> The Court sustained the objection. Section 6, Rule 132, Revised Rules on Evidence provides that "the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias or the reverse, and to elicit all important facts bearing upon the issue."
>
> The witness testified only on the rape case. She did not testify anything about acts of lasciviousness committed upon her person. She may not therefore be questioned on this matter because it is not connected with her direct testimony or has any bearing upon the issue. To allow adverse party to cross-examine the witness on the acts of lasciviousness which is pending trial in another court and which the witness did not testify is improper.
>
> Questions concerning acts of lasciviousness will not in any way test the accuracy and truthfulness and freedom from interest or bias or the reverse. On the contrary such questions, if allowed, will unduly burden the court with immaterial testimonies.[25]

In another order, dated January 13, 1998, the trial court gave accused-appellant's counsel 20 days within which to elevate its ruling to the appellate court.[26] The records reveal, however, that no such petition was filed by Atty. Mangalindan as regards this particular matter.

The question, therefore, is whether the trial court correctly disallowed accused-appellant's counsel from questioning complainant as regards the other supposed acts of lasciviousness contained in her sworn statement. On this point, Rule 132, §6 of the Revised Rules on Evidence provides:

> Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest, bias or the reverse and to elicit all important facts bearing upon the issue.

The right of a party to cross-examine a witness is embodied in Art. III, §14(2) of the Constitution which provides that the accused shall have the right to meet the witnesses face to face and in Rule 115, §1(f) of the Revised Rules of Criminal Procedure which states that, in all criminal prosecutions, the accused shall have the right to confront and cross-examine the witnesses against him.[27] The cross-examination of a witness is essential to test his or her credibility, expose falsehoods or half-truths, uncover the truth which rehearsed direct examination testimonies may successfully suppress, and demonstrate inconsistencies in substantial matters which create reasonable doubt as to the guilt of the accused and thus give substance to the constitutional right of the accused to confront the witnesses against him.[28]

The right of the accused to cross-examine a witness is, however, not without limits but is subject to the rules on the admissibility and relevance of evidence. Thus, in People v. Zheng Bai Hui,[29] this Court upheld the ruling of the trial judge disallowing the questions propounded by the accused's counsel on the ability of the arresting officer to distinguish between tawas and shabu without a laboratory examination, the academic degree of his training instructor, and the officer's authorship of books on drug identity and analysis for being irrelevant, improper, and impertinent.

In this case, accused-appellant's counsel argued that his questions to Erlanie on the other acts of lasciviousness supposedly committed by accused-appellant against her were for the purpose of testing her credibility. There was, however, no showing on his part how these questions had any bearing on complainant's credibility or on the truth of her claims. One is led to suspect that the purpose of these questions was to confuse complainant into

committing mistakes in her answers during cross-examination that accused-appellant's counsel could later use to possibly put complainant's credibility, not to mention her character, in question.

Accused-appellant insists that his counsel should have been allowed to ask questions in relation to the sworn statement executed by complainant. He cites Rule 132, §17 of the Revised Rules of Evidence which provides that:

> When part of an act, declaration, conversation, writing or record is given in evidence by one party, the whole of the same subject matter may be inquired into by the other.

Neither can this rule be invoked to justify the questioning of complainant which the trial court did not allow. As the above provision states, this rule applies to parts of "an act, declaration, conversation, writing or record" which is given in evidence.

Indeed, the records show that after Erlanie had finished with her direct examination on November 25, 1997, the trial judge granted the motion made by Atty. Anselmo Mangalindan, accused-appellant's private counsel, to postpone Erlanie Rivera's cross-examination to allow him time to secure copies of the transcript of stenographic notes of Erlanie's testimony and thus enable him to fully question complainant.[30] Erlanie was first cross-examined on December 2, 1997, but several postponements, namely, on January 13, 1998,[31] February 10, 1998,[32] March 12, 1998,[33] March 31, 1998,[34] April 7, 1998,[35] May 12, 1998,[36] May 26, 1998,[37] May 28, 1998,[38] and June 11, 1998,[39] on Erlanie's cross-examination took place because of the failure of Atty. Mangalindan to appear on the said trial dates. Erlanie's cross-examination was continued on July 14, 1998 and July 23, 1998. Her cross-examination by accused-appellant's counsel was thorough and covered various subjects, such as the nature of the relationship between her parents, who were present during the execution of her sworn statement, whether the same had been executed by her voluntarily, the date when she was raped by accused-appellant the reason for her delay in reporting the rape committed by accused-appellant, her understanding of Tagalog, who were with her in the house at the time of the rape, the details surrounding the rape committed against her, and her age. It is evident that accused-appellant and his counsel were given ample opportunity to conduct the cross-examination of Erlanie Rivera in order to test her truthfulness.

B. The record shows that because accused-appellant's private counsel was not present when Dr. Barin testified, Atty. Eddie Bansil was appointed by the trial court as accused-appellant's counsel de oficio for that particular hearing. Atty. Bansil moved for the postponement of the witness' cross-examination, but the trial court denied his request because, on the one hand, accused-appellant was a detention prisoner and Dr. Barin was a very busy person, while, on the other hand, Atty. Bansil had heard the testimony of the said witness. Atty. Bansil then decided not to cross-examine Dr. Barin.[40]

Accused-appellant now contends that the trial judge denied the motion of Atty. Bansil for postponement because he was biased against him. Accused-appellant claims that the counsel de oficio was not familiar with the facts of his case and was thus in no position to cross-examine Dr. Barin.

While the Constitution recognizes the accused's right to competent and independent counsel of his own choice, his option to secure the services of a private counsel is not absolute. For considering the State's and the offended party's right to speedy and adequate justice, the court may restrict the accused's option to retain a private counsel if the accused insists on an attorney he cannot afford, or if the chosen counsel is not a member of the bar, or if the attorney declines to represent the accused for a valid reason.[41]

The trial court appointed Atty. Bansil a counsel de oficio to represent accused-appellant on October 6, 1998 because his regular counsel, Atty. Anselmo Mangalindan, was absent without any explanation. Atty. Mangalindan had previously been granted several postponements. As this Court ruled in another case:

> . . . Courts are not required to wait indefinitely the pleasure and convenience of the accused as they are also mandated to promote the speedy and orderly administration of justice. Nor should they countenance such an obvious trifling with the rules. Indeed, public policy requires that the trial continue as scheduled, considering that appellant was adequately represented by counsels who were not shown to be negligent, incompetent or otherwise unable to represent him.[42]

Atty. Bansil was present and heard the testimony of Dr. Barin, the prosecution witness, on that day. Dr. Barin's testimony on direct examination was simple, containing primarily a discussion of her findings on the hymenal laceration sustained by complainant. Her testimony did not require considerable study and extraordinary preparation on the part of defense counsel for the purpose of cross-examination. It seems Atty. Bansil no longer found it necessary to cross-examine Dr. Barin.

Moreover, beyond stating that Dr. Barin was a vital witness, accused-appellant has not indicated what questions his counsel wanted to ask from Dr. Barin. It may well be that these questions do not exist at all and that the importance given by accused-appellant to counsel de oficio's failure to cross-examine the witness is exaggerated. Indeed, a medical examination of the victim, together with the medical certificate, is merely corroborative and is not an indispensable element of rape.[43] The primordial issue in this case remains to be whether the complainant's testimony, not Dr. Barin's, established beyond reasonable doubt the crime of rape.

C. Accused-appellant likewise points to the trial judge's questions propounded to him during his cross-examination as an indication of the latter's partiality for the prosecution.

We find no merit in this contention. Where the trial court is judge both of the law and of the facts, it is oftentimes necessary in the due and faithful administration of justice for the presiding judge to re-examine a witness so that his judgment, when rendered, may rest upon a full and clear understanding of the facts.[44] Our reading of the transcript of stenographic notes in this case shows that the trial judge merely wanted to clarify certain points relating to the defense of accused-appellant and not to establish his guilt. It is a judge's prerogative to ask questions to ferret out the truth.[45] It cannot be taken against him if the questions he propounds reveals certain truths which, in turn, tend to destroy the theory of one party.[46] As this Court held:

> In any case, a severe examination by a trial judge of some of the witness for the defense in an effort to develop the truth and to get at the real facts affords no justification for a charge that he has assisted the prosecution with an evident desire to secure a conviction, or that he had intimidated the witnesses for the defense. The trial judge must be accorded a reasonable leeway in putting such questions to witnesses as may be essential to elicit relevant facts to make the record speak the truth. Trial judges in this jurisdiction are judges of both the law and the facts, and they would be negligent in the performance of their duties if they permitted a miscarriage of justice as a result of a failure to propound a proper question to a witness which might develop some material bearing upon the outcome. In the exercise of sound discretion, he may put such question to the witness as will enable him to formulate a sound opinion as to the ability or the willingness of the witness to tell the truth. A judge may examine or cross-examine a witness. He may propound clarificatory questions to test the credibility of the witness and to extract the truth. He may seek to draw out relevant and material testimony though that testimony may tend to support or rebut the position taken by one or the other party. . .[47]

D. We also find no merit in accused-appellant's argument that he was denied due process considering the speed with which the trial court rendered judgment against him, which judgment was promulgated one day after he filed his memorandum.

The decision rendered by the trial court gives a clear account of the facts and the law on which it is based. It discusses in full the court's findings on the credibility of both the prosecution and defense witnesses and its evaluation of the evidence of both parties. What we said in the analogous case of People v. Mercado[48] applies

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to this case:

> . . . A review of the trial court's decision shows that its findings were based on the records of this case and the transcripts of stenographic notes during the trial. The speed with which the trial court disposed of the case cannot thus be attributed to the injudicious performance of its function. Indeed, a judge is not supposed to study a case only after all the pertinent pleadings have been filed. It is a mark of diligence and devotion to duty that a judge studies a case long before the deadline set for the promulgation of his decision has arrived. The one-day period between the filing of accused-appellants' memorandum and the promulgation of the decision was sufficient time to consider their arguments and to incorporate these in the decision. As long as the trial judge does not sacrifice the orderly administration of justice in favor of a speedy but reckless disposition of a case, he cannot be taken to task for rendering his decision with due dispatch. . .

II. Coming now to the merits of this case, we find that the evidence proves beyond reasonable doubt the guilt of accused-appellant. In reviewing rape cases, we have been guided by the following principles: (a) An accusation for rape is easy to make, difficult to prove, and even more difficult to disprove; (b) In view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with extreme caution; and (c) The evidence for the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.[49]

A. Well-settled is the rule that the lone testimony of a rape victim, by itself, is sufficient to warrant a judgment of conviction if found to be credible. It has likewise been established that when a woman declares that she has been raped she says in effect all that is necessary to mean that she has been raped, and where her testimony passes the test of credibility the accused can be convicted on the basis thereof. This is because from the nature of the offense, the sole evidence that can usually be offered to establish the guilt of the accused is the complainant's testimony.[50]

Considering complainant's tender age, her shy demeanor, and manner of testifying in court, the trial court found Erlanie's testimony to be straightforward, natural, and convincing and accorded the same full faith and credit.[51]

Complainant told the court how she was awakened because accused-appellant kissed her and fondled her breasts. She narrated that she tried to resist accused-appellant's advances by pushing and kicking him, but the latter succeeded in ravishing her. She told of how her father threatened to kill her mother and her siblings if she reported the incident. Despite the lengthy cross-examination of accused-appellant's counsel, she remained firm and steadfast in her story of how she was raped by her father. Her narration not only rings true and sincere but is consistent and unshaken on its material points. Complainant's testimony is fully corroborated by the medical findings of Dr. Barin who examined complainant shortly after she had been raped. She found complainant to have suffered a hymenal laceration at the 3 o'clock position which could have been caused by the penetration of a hard object, such as a male organ.

Complainant's failure to remember the date of the commission of the rape cannot be taken against her. The exact date when complainant was sexually abused is not an essential element of the crime of rape.[52] Nor does the fact that complainant was sleeping beside her sister when the rape occurred detract from her credibility. The possibility of rape is not negated by the fact that the presence of even the whole family of the accused inside the same room produced the possibility of discovery. For rape to be committed, it is not necessary for the place to be ideal, for rapists respect neither time nor place for carrying out their evil designs.[53]

In sum, accused-appellant failed to show any reason why this Court should disbelieve complainant's testimony. Indeed, the gravity of filing a case for incestuous rape is of such a nature that a daughter's accusation must be taken seriously. It is against human experience for a girl to fabricate a story which would drag herself and her family to a lifetime of dishonor, unless it is the truth. More so when her charge could mean the execution of her

own father, as in this case.[54]

Accused-appellant's counsel on cross-examination made much of the discrepancy between complainant's sworn statement where she stated that accused-appellant slept beside her mother after the rape[55] and her testimony that her mother returned home from the hospital only the day after the rape took place.[56] It must be pointed out, however, that discrepancies between a witness' affidavit and his testimony in open court does not necessarily impair his credibility. Affidavits, which are taken ex parte, are often incomplete or inaccurate for lack of or absence of searching inquiries by the investigating officer.[57]

Moreover, whether accused-appellant slept alone or with complainant's mother after committing the rape of complainant is of no moment as it is a minor point that does not reflect on the commission of the crime itself. The rule is that discrepancies and inconsistencies on minor matters neither impair the essential integrity of the prosecution evidence as a whole nor reflect on the witness' honesty. Such inconsistencies may in fact strengthen rather than weaken the credibility of the witness as they erase any suspicion of rehearsed testimony.[58]

Accused-appellant contends that complainant could not have been raped on March 1 or 2, 1997, the dates when her sister Zaira was hospitalized, because she had her last menstrual period on March 3, 1998 and thus she could not have gotten pregnant as a result of the rape. He argues that a woman who had her monthly period cannot be impregnated as a result of sexual intercourse five days before or five days after her last menstruation.[59]

Accused-appellant does not, however, cite any legal or medical authority for his thesis, except what he claims to be common knowledge. On the other hand, we have previously held that it is hard to ascertain the exact date of fertilization inasmuch as more than two weeks is considered to be the life span of the spermatozoa in the vaginal canal.[60] Hence, even granting that complainant could not have been impregnated by accused-appellant during the period alleged by him, it remains possible for complainant to have gotten pregnant afterwards. More importantly, it must be emphasized that pregnancy is not an element of the crime of rape and is, therefore, totally immaterial to the question of accused-appellant's guilt.[61] In other words, accused-appellant being the cause of complainant's pregnancy is a non-issue in the prosecution of the crime of rape. What should not be lost sight of is the fact that complainant's testimony constitutes proof beyond reasonable doubt that accused-appellant had carnal knowledge of her without her consent, and such fully established the crime of rape.

B. Accused-appellant imputes ill motive on the part of complainant's mother and her relatives for bringing charges against him. He claims that complainant's mother resented the fact that he used to beat her up out of jealousy and that he had several paramours in the past. He further asserts that his wife's relatives were angry with him because of the land which he caused to be registered in his name to the prejudice of the latter.

This allegation is without merit. Accused-appellant makes it appear that complainant's mother was responsible for the filing of this case against him. This is not so. For that matter, his wife did not testify against him. It was his daughter, complainant, alone who denounced him in court.

Accused-appellant's claim that the motivation for the filing of this case was the animosity of his wife's relatives towards him caused by his land-grabbing of their land is likewise without any basis. It may be that his wife's relatives took advantage of his incarceration and made him sign his waiver of rights over the land.[62] But this does not necessarily mean they conspired to persecute him. It is noteworthy that accused-appellant never claimed that the document which he signed (Exh. 3) existed before the filing of the criminal complaint against him or that his wife's relatives fabricated the charge against him because of his failure to sign the same.

Indeed, what accused-appellant's defense cannot explain is the hymenal laceration sustained by complainant or the steadfastness she has exhibited in pursuing the charge against her own father. It is doubtful that complainant

would let herself be embroiled in a petty family dispute in exchange for her honor and dignity. We cannot believe that a young girl, like complainant, would invent a sordid tale of sexual abuse by accused-appellant unless it was the truth.[63] Where there is no evidence to show a doubtful reason or improper motive why a prosecution witness should testify against the accused or falsely implicate him in a crime, her testimony is trustworthy.[64]

Accused-appellant also raises the defense of denial and alibi. But the bare denial of accused-appellant cannot overcome the positive declarations of complainant. Denial, when unsubstantiated by clear and convincing evidence, constitutes negative self-serving evidence which deserves no greater evidentiary value than the testimony of a credible witness who testified on affirmative matters.[65]

Accused-appellant's sister, Concepcion Sayo, testified that accused-appellant lived with her family in Bulacan at the time of the rape. No other witness not related to accused-appellant, however, was called to corroborate her claim. We have already held that the defense of alibi cannot prosper if it is established mainly by the accused and his relatives, and not by credible persons. It is not improbable that these witnesses would freely perjure themselves for the sake of their loved ones.[66] Accused-appellant's defense thus fails to convince this Court.

C. The foregoing discussion notwithstanding, we think that the imposition of the death penalty by the trial court is erroneous. It is settled that to justify the imposition of the death penalty, both the relationship of the victim and her age must be alleged and proved.[67] Thus, in People v. Javier,[68] where the victim was alleged to be 16 years old at the time of the commission of the rapes, it was held:

> . . . Although the victim's age was not contested by the defense, proof of age of the victim is particularly necessary in this case considering that the victim's age which was then 16 years old is just two years less than the majority age of 18. In this age of modernism, there is hardly any difference between a 16-year old girl and an 18-year old one insofar as physical features and attributes are concerned. A physically developed 16-year old lass may be mistaken for an 18-year old young woman, in the same manner that a frail and young-looking 18-year old lady may pass as a 16-year old minor. Thus, it is in this context that independent proof of the actual age of a rape victim becomes vital and essential so as to remove an iota of doubt that the victim is indeed under 18 years of age as to fall under the qualifying circumstances enumerated in Republic Act No. 7659. In a criminal prosecution especially of cases involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established by the prosecution in order for said penalty to be upheld.

A duly certified certificate of live birth showing complainant's age, or some other official document on record, such as a school record, has been recognized as competent evidence.[69]

In this case, although complainant's minority has been alleged in the information, no independent evidence was presented by the prosecution to prove the same. Complainant did not even state her age at the time of the rape during direct examination; it was only during her cross-examination when she stated that she was 12 years old at the time she was raped by her father.[70]

Nor was her birth certificate or baptismal certificate or any school record presented by the prosecution to prove the age of Erlanie at the time of the rape. Not even her mother, whose testimony could have been sufficient to prove the age of complainant,[71] testified in this case. What was relied upon by the trial court was that fact that the age of the victim was undisputed by the defense.[72] It also took judicial notice of the victim's minority on account of her appearance.[73]

We do not agree with this conclusion. The trial court can only take judicial notice of the victim's minority when the latter is, for example, 10 years old or below. Otherwise, the prosecution has the burden of proving the victim's age at the time of the rape and the absence of denial on the part of accused-appellant does not excuse the

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prosecution from discharging its burden.[74] In a similar case, People v. Tundag,[75] in which the trial court took judicial notice of the minority of the victim who was alleged to be 13 years old, we ruled:

> In this case, judicial notice of the age of the victim is improper, despite the defense counsel's admission, thereof acceding to the prosecution's motion. As required by Section 3 of Rule 129, as to any other matters such as age, a hearing is required before courts can take judicial notice of such fact. Generally, the age of the victim may be proven by the birth or baptismal certificate of the victim, or in the absence thereof, upon showing that said documents were lost or destroyed, by other documentary or oral evidence sufficient for the purpose.

The prosecution having failed to present evidence as to complainant's age, accused-appellant can be convicted only of simple rape, for which the penalty is reclusion perpetua.

Consequently, the award of civil indemnity in the amount of P75,000.00 made by the trial court cannot be sustained. Such amount can only be awarded if the crime of rape was effectively qualified by any of the circumstances under which the death penalty is authorized by the applicable amendatory laws.[76] Accordingly, the civil indemnity awarded to complainant must be reduced to P50,000.00 in consonance with current rulings.[77]

The award of moral damages in the amount of P50,000.00 to complainant is correct. Moral damages is awarded in rape cases without need of showing that the victim suffered from mental, physical, and psychological trauma as these are too obvious to require recital by the victim during trial.[78]

In addition to the damages given by the trial court, exemplary damages in the amount of P25,000.00 should likewise be awarded in favor of complainant. Accused-appellant being the father of complainant, such relationship can be appreciated as a generic aggravating circumstance warranting the award of exemplary damages. In rapes committed by fathers against their daughters, such award may be imposed to serve as a deterrent to other parents similarly disposed to commit the same crime.[79]

WHEREFORE, the decision of the Regional Trial Court, Branch 49, Guagua, Pampanga, finding accused-appellant guilty of the crime of rape is AFFIRMED with the modification that accused-appellant is sentenced to suffer the penalty of reclusion perpetua and to pay complainant Erlanie Rivera the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

SO ORDERED.

Bellosillo, Puno, Vitug, Kapunan, Quisumbing, Pardo, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.
Davide, Jr., C.J., Melo, Panganiban, and Buena, JJ., abroad on official business.
Sandoval-Gutierrez J., on leave.

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[1] Per Judge Rogelio C. Gonzales.

[2] Records, p. 2.

[3] Id., p. 15.

[4] Also referred to as Shaira.

[5] TSN, pp. 4-14, Nov. 4, 1997.

[6] TSN, pp. 2-3, Nov. 25, 1997.

[7] TSN, pp. 2-10, Dec. 2, 1997.

[8] TSN, pp. 4-10, July 14, 1998.

[9] TSN, pp. 2-16, July 23, 1998.

[10] TSN, pp. 2-6, Aug. 27, 1998.

[11] TSN, pp. 3-6, Sept. 3, 1998.

[12] Exh. C.

[13] TSN, pp. 3-10, Oct. 6, 1998.

[14] TSN, pp. 2-15, Oct. 29, 1998.

[15] Exh. 2.

[16] Exh. 3.

[17] TSN, pp. 4-7, Feb. 11, 1997.

[18] TSN, pp. 3-5, March 30, 1999.

[19] TSN, pp. 3-6, April 29, 1999.

[20] Exh. 4.

[21] Decision, p. 11; Records, p. 142.

[22] Brief for the Accused-Appellant, p. 1; Rollo, p. 54.

[23] People v. Santocildes, Jr., 321 SCRA 310 (1999).

[24] TSN, pp. 5-8, Dec. 2, 1997.

[25] Records, pp. 26-27.

[26] Records, p. 30.

[27] People v. Suplito, 314 SCRA 493 (1999).

[28] People v. Nadera, Jr., 324 SCRA 490 (2000).

[29] G.R. No. 127580, Aug. 22, 2000.

[30] TSN, pp. 3-4, Nov. 25, 1997.

[31] Id., p. 30.

[32] Id., p. 32.

[33] Id., p. 37.

[34] Id., p. 42.

[35] Id., p. 47.

[36] Id., pp. 56-57.

[37] Id., p. 58.

[38] Id., pp. 59-60.

[39] Id., p. 65.

[40] TSN, p. 11. Oct. 6, 1998.

[41] People v. Serzo, Jr., 274 SCRA 553 (1997).

[42] Id., p. 568.

[43] People v. Segui, G.R. Nos. 131532-34, Nov. 28, 2000.

[44] People v. Aquino, 314 SCRA 543 (1999) citing People v. Manalo, 148 SCRA 98 (1987).

[45] People v. Cabiles, G.R. No. 125005, Oct. 3, 2000.

[46] People v. Docena, 322 SCRA 820 (2000) citing People v. Edualino, 271 SCRA 189 (1997).

[47] People v. Zheng Bai Hui, supra.

[48] G.R. No. 116239, Nov. 29, 2000.

[49] People v. De Guzman, G.R. No. 124368, June 8, 2000.

[50] People v. Aloro, G.R. No. 129208, Sept. 14, 2000.

[51] Decision, pp. 4-5; Records, pp. 135-136.

[52] People v. Garcia, G.R. No. 117406, Jan. 16, 2001.

[53] People v. Watimar, G.R. Nos. 121651-52, Aug. 16, 2000 citing People v. Antonio, G.R. No. 122473, June 8, 2000.

[54] People v. Elpedes, G. R. Nos. 137106-07, Jan. 31, 2001.

[55] Exh. C; Exh. 1.

[56] TSN, p. 10, Nov. 4, 1997.

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

[58] People v. Villanueva, G. R. No. 135330, Aug. 31, 2000.

[59] Brief for the Accused-Appellant, pp. 9-10; Rollo, pp. 62-63.

[60] People v. Sta. Ana, 291 SCRA 188 (1998).

[61] Id. See also People v. Perez, 307 SCRA 276 (1999) and People v. Adora, 275 SCRA 441 (1997).

[62] Exh. 3.

[63] People v. Segui, supra.

[64] People v. Aloro, supra.

[65] People v. Quilata, G.R. No 132725, Sept. 28, 2000.

[66] People v. Gopio, G. R. No. 133925, Nov. 29, 2000.

[67] People v. Francisco, G.R. Nos. 134566-67, Jan. 22, 2001.

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[68] 311 SCRA 122, 140-141 (1999).

[69] People v. Marquez, G. R. Nos. 137408-10, Dec. 8, 2000.

[70] TSN, p. 12, July 23, 1998.

[71] People v. Dela Cruz, G.R. Nos. 131167-68, Aug. 23, 2000.

[72] Decision, p. 10; records, p. 141.

[73] Id., p. 4; id., p. 135.

[74] People v. Tipay, 329 SCRA 52 (2000); People v. Cula, 329 SCRA 101 (2000).

[75] G.R. Nos. 135695-96, Oct. 12, 2000.

[76] People v. Rafales, 323 SCRA 13 (2000).

[77] People v. Lomibao, G.R. No. 135855, Aug. 3, 2000; People v. Mendez, G.R. No. 132546, July 5, 2000.

[78] People v. Docena, supra.

[79] People v. Lopez, G. R. Nos. 135671-72, Nov. 29, 2000; People v. Tundag, supra.

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