

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ESMERALDO CANA Y DEL VALLE ALIAS “SMITH”,
ACCUSED-APPELLANT.**

G.R. No. 139229. April 22, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us for automatic review is the decision^[1] dated December 28, 1998, of the Regional Trial Court of Camarines Norte, Branch 38, in Criminal Case No. 9000, convicting appellant Esmeraldo Cana y del Valle of rape, and sentencing him to death as well as to pay the victim the amount of P50,000 as civil indemnity.

The information filed against appellant reads as follows:

That on the early morning of January 28, 1997 at Sitio Mantigbe, Barangay Calangcawan Sur, municipality of Vinzons, province of Camarines Norte, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully, and feloniously, by means of force, violence, and intimidation, lie and had carnal knowledge of one Jovelyn Lestana, a ten (10) year old girl against her will and consent to the damage and prejudice of herein victim.

CONTRARY TO LAW.^[2]

On May 19, 1997, appellant entered a plea of not guilty. Thereafter, trial on the merits ensued.

The prosecution presented as witnesses Jovelyn Listana,^[3] the complainant; Dr. Marcelito Abas, the examining doctor; and Belen Senes,^[4] resident of Purok 6 in Barangay Mantigbi.^[5]

Complainant JOVELYN LISTANA testified that she was ten (10) years old.^[6] She lived with appellant, the live-in partner of her aunt Josephine whom she calls “Mama”.^[7] She babysat for their child and ran errands for them.^[8] She recounted that one day, the date of which she could not recall since she was sexually abused many times by appellant,^[9] he undressed her, removed her panty, placed himself on top of her, and inserted his penis in her vagina.^[10] She felt pain and tried to stop him but he continued. Only when she cried of pain did appellant stop.^[11] She explained that she could not stop him because he threatened to hang her.^[12] He also threatened her against telling anyone. Later, whenever her aunt was in Manila, which was often,^[13] he would rape her.

According to Jovelyn, she narrated her ordeal first to her Ate Fe and later her Ate Belen.^[14] Her Ate Belen, then the president of their “purok”, accompanied her to their barangay captain, who in turn reported the matter to the police station of Vinzons, Camarines Norte.^[15] She executed an affidavit in the presence of DSWD worker Gemma Orcajada.^[16] She was then brought to the Camarines Norte Provincial Hospital for genital examination.^[17]

On cross-examination, she recalled that appellant oftentimes scolded and punished her for her mistakes in doing household chores and that she resented appellant for punishing her.^[18] She said that appellant’s penis penetrated

her vagina easily as he had sexually molested her many times over.[19]

According to her, after the first time that he raped her, her urine had traces of blood.[20] She claims that appellant abused her anytime of the day.[21] The contents of the Social Case Study Report of the DSWD were admitted by the defense.[22]

DR. MARCELITO ABAS, a physician at the Camarines Norte Provincial Hospital, testified that he medically examined the victim who, he said, was ten years old, on February 3, 1997.[23] He found “superficial hymenal laceration in her genitalia at 7:00 and 10:00 o’clock; small opening of the vaginal orifice measuring about 0.5 cm., diameter more or less; negative for any physical injuries.”[24] In his opinion, there was penetration of the victim’s vagina by a penis, and the laceration of the hymen was due to sexual intercourse or defloration.[25]

BELEN SENES, nicknamed Ate Belen, testified that she was the president of Purok 6, Barangay Mantigbi, Calangcawan Sur, Vinzons, Camarines Norte. She knew both the victim[26]and appellant.[27] She recounted that on January 31, 1997, sometime between 9:00 and 11:00 A.M., Jovelyn Listana told her that she had been raped by appellant.[28] Belen reported the matter to Barangay Captain Dominico[29] Mago, Jr., who advised her to go to the DSWD.[30] Since it was a Friday afternoon, Belen took custody of Jovelyn who had asked Belen not to bring her back to appellant because it was he who raped her.[31]

Belen narrated that appellant later on went to her house looking for Jovelyn. He said he wanted to talk to her and added that Jovelyn would lie on many things.[32] Appellant talked to Jovelyn, who refused to go with him because she was afraid of him.[33] At first, he forced her to come with him but Jovelyn cried and held on to the fence, then reached for Belen, and begged not to be given to appellant.[34] According to Belen, appellant left after she refused to give Jovelyn to him.[35]

The next morning, Belen recalled seeing appellant in a tricycle with a pig and, suspecting he would escape, she hurriedly went to the PNP. However, she was instead asked to bring Jovelyn to the PNP office.[36] The police interrogated Jovelyn, then went to Daet to look for appellant; they found him selling a pig and then brought him to Vinzons.[37] Belen said she turned over Jovelyn to the PNP and later, to the DSWD.[38] According to her, Jovelyn was then nine (9) years old.[39]

The defense presented as witnesses: (1) Tito Ochoa, appellant’s landlord; (2) Gerwin Cana, appellant’s son; (3) Gracita Vasquez, appellant’s sister; and (4) appellant himself.

TITO OCHOA testified that he knew Jovelyn, having seen her with her grandmother at appellant’s house.[40] He observed that Jovelyn was fond of climbing coconut trees and that every time she did, appellant would beat her up with a twig.[41] So, she fled the house and at times would not return.[42]

Twelve-year old GERWIN CANA stated that he knew Jovelyn, who lived in their house for a year.[43] He narrated that appellant often scolded and whipped Jovelyn for her various mistakes such as stealing appellant’s money[44] and climbing coconut trees.[45] Twice, he saw her embrace a dog, play with its organ, and insert it in her vagina.[46] He confirmed that Jovelyn would fight back whenever appellant beat her up.

On cross-examination, Gerwin testified that he told appellant about Jovelyn’s habit of toying with the dog’s penis. Appellant whipped Jovelyn and warned her not to repeat it, and killed the dog.[47]

GRACITA VAZQUEZ testified that she knew Jovelyn as her sister-in-law’s daughter.[48] During a family reunion at appellant’s house on November 2, 1994, she noticed Jovelyn fondling the dog’s penis.[49] She told appellant about this, but he answered that Jovelyn got mad at him whenever he scolded her.[50]

Appellant ESMERALDO CANA testified that on the night of January 27, 1997, just before the alleged offense, he

was at the seashore catching shrimps and that he went home at midnight.[51] He saw Jovelyn sleeping at home with legs apart, and wearing a torn panty that revealed her vagina.[52] He touched her vagina twice.[53] This awakened the complainant who, he claimed, was eleven years old. She then ran to the sala.[54] His two sons were also awakened and he did not pursue her anymore but went to sleep instead.[55]

During cross-examination, he denied inserting his penis inside the complainant's genitalia. He said that he only wanted to tease complainant by touching her vagina,[56] but admitted that doing so got him aroused to the extent that he inserted his middle finger in it.[57] He admitted that during his arrest, he did not tell the police or execute an affidavit stating that he merely touched her vagina.[58]

On December 28, 1998, the trial court handed down its decision as follows:

WHEREFORE, finding the accused Esmeraldo Cana GUILTY beyond reasonable doubt of the crime of Rape as defined under Art. 335 of the Revised Penal Code, as amended by R.A. 7659, he is hereby sentenced to suffer the extreme penalty of DEATH.

Further, he is ordered to indemnify the offended party the amount of P50,000.00 as indemnity.

SO ORDERED.[59]

Hence, this appeal assigning the following errors allegedly committed by the trial court:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED FOR THE CRIME CHARGED WAS PROVEN BY THE PROSECUTION BEYOND REASONABLE DOUBT.

II

GRANTING THAT ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE ABSENCE OF ANY CIRCUMSTANCE TO QUALIFY THE CRIME OF SIMPLE RAPE.[60]

In essence, the pertinent issues raised by appellant concern (1) the propriety of leading questions addressed to the complainant; (2) the sufficiency of the prosecution's evidence to prove appellant's guilt for the crime of rape; and (3) the correctness of the penalty imposed on him.

First, on the procedural issue. Appellant imputes partiality to the trial court for allowing the prosecution to ask Jovelyn leading questions on direct examination. He claims that were it not for these improper questions, the prosecution could not have established the crime charged.

As a general rule, leading questions are not allowed. However, we have held that when the witness is a child of tender years, it is proper for the court to allow leading questions[61] as it is usually difficult for a child of such age to state facts without prompting or suggestion.[62] Leading questions are necessary to coax the truth out of their reluctant lips. Here, the decision of the trial court to allow leading questions to Jovelyn was justified, as she was evidently young and unlettered, making the recall of events difficult, if not uncertain. Her cross-examination is quite instructive on this matter, to wit:

ATTY. BARANDON:

Q:

Miss witness, do you know how to write?

A:

I do not know how to write.

Q:

You do not know how to write your name?

A:

I know, Sir.

Q:

Do you know how to read?

A:

No, Sir.

Q:

Even in Tagalog you do not know how to read, Miss Witness?

A:

I do not know.

Q:

Is it not true Miss Witness that you are in Grade I, did you finish Grade I?

A:

No, Sir.

Q:

Did your teacher [teach] you how to read and write?

A:

I was taught.

COURT:

The Court take (sic) notice that in Grade I you will not learn how to read and write fully. That is of judicial notice.[63]

Nevertheless, after careful reading of the records, we find that even if the alleged leading questions were not allowed, Jovelyn's testimony appears credible and comprehensive. She gave a candid, plain, and straightforward account on how she was raped by appellant. She spoke in a manner reflective of honest and unrehearsed testimony. Moreover, when it comes to the issue of credibility, this Court generally defers to the assessment and evaluation given by the trial court^[64] because of its unique position to observe the demeanor of the witnesses. In this case, we reiterate the truism that it is highly inconceivable that a young barrio lass, inexperienced with the ways of the world, would fabricate a charge of defloration, undergo a medical examination of her private parts, subject herself to public trial, and tarnish her family's honor and reputation, unless she was motivated by a potent desire to seek justice for the wrong committed against her.^[65]

The element of force and intimidation used in committing the offense was sufficiently established. First, appellant threatened to hang Jovelyn if she resisted his sexual assaults.^[66] Then he repeatedly threatened her against telling anyone about the molestation.^[67] Note that appellant claimed, however, that complainant was just about the same age as his son Gerwin who, he said, was about 11 years old.^[68] Recall that the prosecution witnesses testified she was 10 years old at the time of the offense, as alleged by the prosecution. Thus, we find that complainant was less than 12 years old, and when the offended party is below 12 years old, as in this case, even though force or intimidation is not present, carnal knowledge of the woman is, by definition, rape. [See Revised Penal Code as amended, Art. 335 (3), but now Art. 266-A, par. (1) (d)].

According to appellant, the trial court failed to appreciate the testimony of his son, Gerwin Cana. But his testimony took a bizarre turn by suggesting that Jovelyn's defloration was caused by the insertion of a dog's penis into her vagina and by climbing coconut trees. This suggestion, however, was contradicted by Dr. Abas, who testified that Jovelyn's defloration could have only been caused by the insertion of a person's penis.^[69]

Appellant's main defense of alibi and denial, i.e., that he was then at the seashore catching shrimps^[70] in the evening just before the alleged rape, is equally unavailing. For alibi to prosper, the requirements of time and place must be strictly met.^[71] It is not enough to prove that the accused was somewhere else when the offense was committed. It must likewise be shown that he was so far away that it was impossible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.^[72] No such showing was made here by appellant.

In another bizarre twist, appellant insisted he merely "touched her private parts with the use of the middle finger". This admission was touted as a badge of truthfulness. Juxtaposed against the testimony of the 10-year-old victim that he ravished her on several occasions, his claim to honesty is woefully pathetic. His lewd design on her surfaced clearly during cross-examination. According to his testimony, when he saw the complainant with legs apart, wearing a torn panty that revealed her vagina,^[73] he caressed complainant's vagina not once but twice. He got excited as he did, so he inserted his middle finger inside her private parts.^[74]

The presence of appellant's son in the crime scene, even if true, would not negate the possibility of rape. It would not logically follow that because he could have heard or seen the assault, rape could not take place. As previously held, rape happens even in the same room where other family members also slept.^[75] There is no rule providing that rape can only be committed in seclusion.^[76]

To sum up, appellant's protestation of innocence is hollow. The prosecution's evidence of his guilt is simply overwhelming.

However, while the Court agrees with the finding concerning appellant's guilt, we cannot sustain the death sentence imposed by the trial court. Appellant was convicted under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, which reads in part:

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. xxx

The trial court imposed the death penalty because the victim, Jovelyn Listana, was only ten (10) years old at the time of the commission of the offense and the offender is her stepparent.[77] But we must stress that if this was the case, both circumstances of the victim's minority and her relationship with the accused should have been alleged in the information,[78] pursuant to the Revised Rules of Criminal Procedure,[79] as qualifying circumstances. Here, the information failed to mention the step-relationship between appellant and the victim, i.e. that of stepfather and stepdaughter. Following *People vs. Balacano*,[80] failure to allege the relationship of step-parentage necessarily excludes the offense from the coverage of R.A. No. 7659. Moreover, we find that appellant's live-in partner, Josephine, was only the victim's aunt and not her real mother.[81] Given these premises, legally speaking, the victim could not claim that appellant is her step-father. It follows that appellant could not be declared guilty of qualified rape but only of statutory rape punishable by reclusion perpetua under Article 335 of the Revised Penal Code.[82]

On the matter of damages, this Court notes that the trial court awarded P50,000 as indemnity. In addition to this award the victim, Jovelyn Listana, is also entitled to moral damages of P50,000 without need of proof other than the fact of rape. By way of public example, and in order to protect young girls from sexual abuse or exploitation, exemplary damages in the amount of P25,000 should also be imposed against appellant.

WHEREFORE, the judgment of the Regional Trial Court of Camarines Norte, Branch 38, in Criminal Case No. 9000, finding ESMERALDO CANA Y DEL VALLE alias "SMITH" GUILTY of rape beyond reasonable doubt, is AFFIRMED with the MODIFICATION that the penalty is reduced to reclusion perpetua, and the appellant is directed to pay the victim, JOVELYN LISTANA P50,000 as civil indemnity, P50,000 as moral damages, P25,000 as exemplary damages, and the costs.

SO ORDERED.

Bellosillo, (Acting C.J.), Puno, Vitug, Mendoza, Panganiban, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

Davide, Jr., C.J., Melo, Kapunan, and Austria-Martinez, JJ., on official leave.

Corona, J., no part in the deliberations.

[1] Rollo, pp. 18-26.

[2] Records, p. 1.

[3] Sometimes "Lestana" in other parts of the records.

[4] Also spelled as "Senis" in the records.

[5] Sometimes "Mantigbe" in other parts of the records.

[6] TSN, June 19, 1997, p. 2.

[7] Id. at 19.

[8] Id. at 3-4.

[9] Id. at 7.

[10] Id. at 5-6.

[11] Id. at 6.

[12] Id. at 8.

[13] Id. at 9.

[14] Id. at 10.

[15] Id. at 11-12.

[16] Sometimes spelled as Gema Orcahada in other parts of the records.

[17] Supra, note 6 at 13.

[18] Id. at 17-18.

[19] Id. at 18.

[20] Id. at 15.

[21] TSN, June 25, 1997, p. 4.

[22] TSN, June 18, 1997, p. 16.

[23] Id. at 4.

[24] RTC Records, p. 6.

[25] Supra, note 22 at 12.

[26] TSN, July 29, 1997, pp. 3-4.

[27] Id. at 6.

[28] Id. at 5-6.

[29] Sometimes spelled as Domingo in other parts of the records.

[30] TSN, July 29, 1997, p. 7.

[31] Id. at 8.

[32] Id. at 9.

[33] Id. at 10.

[34] Id. at 11.

[35] Ibid.

[36] Id. at 12.

[37] Id. at 13.

[38] Ibid.

[39] Ibid.

[40] TSN, November 6, 1997, p. 3.

[41] Id. at 3-4.

[42] Id. at 4-5.

[43] TSN, March 18, 1998, p. 5.

[44] Id. at 6-7.

[45] Id. at 7.

[46] Id. at 8-9, 11, 14.

[47] Id. at 27-28.

[48] TSN, May 5, 1998, p. 8.

[49] Ibid.

[50] Id. at 9.

[51] TSN, September 1, 1998, p. 5.

[52] Id. at 6.

[53] Id. at 6-7.

[54] Id. at 7.

[55] Ibid.

[56] Id. at 21.

[57] Id. at 22-23.

[58] Id. at 25-28.

[59] Rollo, p. 57.

[60] Id. at 37-38.

[61] RULES OF COURT, Rule 132, Section 10 provides:

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

x x x

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

x x x (Emphasis supplied).

[62] People vs. Losano, G.R. No. 127122, 310 SCRA 707, 721 (1999).

[63] TSN, June 19, 1997, pp. 16-17.

- [64] *People vs. Babera*, G.R. No. 130609, 332 SCRA 257, 266 (2000).
- [65] *People vs. Reynaldo*, G.R. No. 116305, 291 SCRA 701, 712-713 (1998).
- [66] *Supra*, note 63 at 8.
- [67] *Ibid*.
- [68] TSN, June 4, 1998, p. 8. Gerwin is also spelled in TSN as “Jerwin”.
- [69] TSN, June 18, 1997, 11-12.
- [70] TSN, September 1, 1998, p. 5.
- [71] *People vs. Antonio*, G.R. No. 118311, 303 SCRA 414, 429 (1999).
- [72] *People vs. Verde*, G.R. No. 119077, 302 SCRA 690, 705 (1999).
- [73] TSN, September 1, 1998, p. 20.
- [74] *Id.* at 22-23.
- [75] *People vs. Perez*, G.R. No. 122764, 296 SCRA 17, 30 (1998).
- [76] *People vs. Talaboc*, G.R. No. 103290, 256 SCRA 441, 449 (1996); *People vs. Catoltol, Sr.*, G.R. No. 122359, 265 SCRA 109, 118 (1996).
- [77] *Rollo*, p. 57.
- [78] *People vs. De Villa*, G.R. No. 124639, February 1, 2001, p. 8.
- [79] Rule 110, Revised Rules of Criminal Procedure:
- Sec. 8. Designation of the offense. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.
- Sec. 9. Cause of the accusation. – The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.
- [80] G.R. No. 127156, 336 SCRA 615, 630 (2000).
- [81] *Supra*, note 6.
- [82] See RPC as amended, before R.A. 8353, the Anti-Rape Law of 1997, took effect on October 22, 1997. 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 is demented.

The crime of rape shall be punished by reclusion perpetua.

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