# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HILGEM NERIO Y GIGANTO, ACCUSED-APPELLANT.

*G.R. No. 142564. September 26, 2001*

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**PER CURIAM:**

This case is here on appeal from the decision[1] rendered on January 31, 2000 by the Regional Trial Court of Bacolod City, Branch 47, finding accused-appellant guilty beyond reasonable doubt of the crime of rape and sentencing him accordingly.

Complainant Vilma M. Concel was, at the time material to this case, 70 years old, a widow, and a retired public school teacher living in Purok Mahimaya-on, Brgy. Bata, Bacolod City. She had eleven children by her late husband Clemente B. Concel.[2] She was the recipient of an award as one of the outstanding mothers of the province of Negros Occidental.[3]

Accused-appellant Hilgem Nerio was, at the time of the alleged commission of the crime, 28 years old, single, and also a resident of Purok Mahimaya-on, Brgy. Bata, Bacolod City. He worked as a Field Coordinator of ABS-CBN Radio.[4] Complainant was his teacher in Grade 1.

The Information[5] in this case charged:

> "That on or about the 1[st] day of April, 1999, in the City of Bacolod, Philippines, and within the jurisdiction of the Honorable Court, the herein accused, being armed with a bladed weapon, by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge of the herein offended party Vilma Concel y Mijares, against the will of the latter.
>
> That the crime was committed with the aggravating circumstance of insult or disregard of the respect due the offended party on account of her rank, being a retired school teacher, and her age, being 70 years old.
>
> Act contrary to law."

Upon his arraignment, accused-appellant pleaded not guilty to the charge and was thereafter tried. The following facts were stipulated upon during the pre-trial conference:

> "1.
>
> The victim Vilma C. Mijares is 70 years old (Corrected in the Order of November 22, 1999 to: The name of the victim is Vilma Concel y Mijares.)
>
> 2.
>
> Private Complainant is the teacher of the accused when he was in grade 1.
>
> 3.
>
> That the incident which led to the filing in this case happened inside the bedroom and the house of the complainant which is at Brgy. Bata, Bacolod City (Corrected in the Order of November 22, 1999 to: The

incident happened inside the bedroom of the victim located at the store which is outside and far from the house of the complainant.)

4.

Both private complainant and the accused Hilgem Nerio are living in the same area known as Purok Mahimaya-on, Brgy. Bata, Bacolod City."[6]

The prosecution presented evidence showing the following: On April 1, 1999, at around 3:30 a.m., complainant Vilma Concel was sleeping in her room inside her "sari-sari" store in Purok Mahimaya-on in Barangay Bata, Bacolod City. At that time, two of her daughters, Carmen Concel, 40 years old, single, and Velmita Concel-Plaza, 42 years old, married, were living with her in their house. It is not clear from the records if there were other people, aside from the two daughters, in their house that time. Complainant was awakened when she felt someone touching her breast and private part. She asked who the man was as she tried to get up. The man was armed with a knife and warned her not to make any noise or he would kill her. Complainant said she would give him what he wanted as long as he did not harm her, but he said he did not need anything because what he wanted was to have sex with her.[7]

According to complainant, the man, whom she identified as accused-appellant Hilgem Nerio, undressed her, took off his own clothes, and went on top of her, while poking a knife on her left side. Complainant said she grappled with accused-appellant for the knife, as a result of which she suffered cuts in the palm of her right hand. Complainant was overpowered by accused-appellant, who succeeded in ravishing her. Complainant testified that accused-appellant asked how many single daughters she had, but she did not answer because she was afraid that he might harm them. Complainant cried and almost lost consciousness.[8]

After he was through, accused-appellant lay on complainant's bed as complainant put on her housedress. Accused-appellant then stood up and put on his clothes. He told complainant to open the main gate and then fled. But before he left, accused-appellant told her that he would be back the next day at the same time.[9]

After accused-appellant had left, complainant went to the main house where her daughter Carmen was sleeping and told her what had happened. The two went to BAC-UP 3 (Police Station 3) that morning and reported the incident. Complainant went to BAC-UP 3 three times in connection with the incident. On her first visit, she did not report to the police that she had been raped. Instead, she only filed a complaint for qualified trespass to dwelling, physical injuries, and grave threats.[10] But on April 3, 1999, at 11 a.m., she went back to the police station with another daughter, Vilma Plaza, and reported that she had been raped. Later, when shown with a photograph of accused-appellant, complainant identified him as the same man who had raped her. The photograph had been given by accused-appellant's father upon the request of a certain SPO3 Puentebella.[11]

That same afternoon, complainant was examined by Dr. Cherryl Gumahin of the Corazon Locsin Montelibano Memorial Regional Hospital. Dr. Gumahin found on complainant's external genitalia a 0.2 cm. partial tear at the 11 o'clock position as well as a .5 cm. and a .2 cm. hyperemia in the hymenal are and lacerations on her right hand. She testified that the tear noted in the hymenal region and the reddening of the vulvar area could have possibly been caused by a foreign blunt object, such as a penis. On the other hand, the lacerations in the palm of complainant's right hand could have been caused by a sharp instrument like a knife.[12]

SPO3 Lina Faith Mojica conducted an ocular inspection of complainant's house on April 5, 1999. Complainant's house is a two-story affair with an extension on the ground floor area where complainant's store was located. SPO3 Mojica theorized that accused-appellant gained entry to the house by scaling the six-foot high concrete wall which surrounded the house. Once he was inside the lot, he detached three (3) glass louvers of the jalousie window of the bathroom located on the ground floor. Accused-appellant passed through the window, then went to


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the second floor passing by the room of Carmen Concel and, through a vacant room, went downstairs and, through the main door, entered the store where complainant was sleeping. The store was separated from the main house by a concrete wall. Complainant's room was in the store. The room had a window covered with bamboo slats. Accused-appellant probably inserted his hand through the bamboo slats and succeeded in opening the door which led to the complainant's room.[13]

Accused-appellant denied the charge against him. He admitted having sex with complainant in the early morning of April 1, 1999, but he claimed that their sexual relation was voluntary and consensual. Accused-appellant said he and complainant were sweethearts and that in fact they already had two sexual encounters before April 1, 1999, the first on the first week of December 1998 and the second on the second week of February 1999.

Concerning the first incident, accused-appellant said that, as a Field Coordinator of ABS-CBN Radio, he made the rounds of Purok Mahimaya-on in search of talents for ABS-CBN Radio. He passed by complainant's house, who was his Grade 1 teacher, and greeted her. According to accused-appellant, complainant was pleased to see him and asked him to transfer a potted plant beside the door of her store to the door near her room. Accused-appellant claimed that after obliging his former teacher and while he was washing his hands to remove the dirt, he was surprised because complainant grabbed his groin, embraced him, and pulled him insider her room. She caressed his chest and unzipped his pants. Accused-appellant said that, as he lay on the bed, complainant held his penis and performed oral sex on him. When accused-appellant said that he felt pain, complainant removed her false teeth and continued what she was doing. Complainant then went on top of him, inserted his penis into her vagina, and they had sexual intercourse.[14]

Accused-appellant said the second sexual encounter between him and complainant took place in the second week of February 1999. At that time, accused-appellant said he needed money and so he went to see complainant. Accused-appellant said she let him in the house and they again engaged in sexual intercourse. Afterward, complainant gave him P300.00.[15]

The third sexual encounter allegedly took place on April 1, 1999. Accused-appellant was on his way home after a drinking spree with a friend, Allan Imbong, in the latter's house in Banago. Accused-appellant passed by complainant's house between 1:00 and 2:00 a.m. When he knocked on the door, complainant opened it and let him in. According to accused-appellant, they again had a tryst. He claimed that, because he could not have an erection, complainant performed oral sex on him, mounted him, and rubbed his penis against her private part. They then had sexual intercourse. Accused-appellant asked for water as he was thirsty. Hence, complainant put on her dress, went to the store, and came back with a glass of water. He asked her for money and was given P100.00, with a promise that she would give him more if he came back.[16]

The other witnesses for the defense were Allan Imbong and PO3 Althamar Tupas. Allan Imbong corroborated accused-appellant's claim that at around 7 p.m. of March 31, 1999, they had a drinking spree at Brgy. Bata. They proceeded to Banago an hour and a half later where they continued drinking. When they finished at around 1 a.m. of April 1, 1999, they returned to Brgy. Bata. Before they reached accused-appellant's house, accused-appellant invited Imbong to have some snacks at the Burger Junction. They were not able to eat, however, as accused-appellant did not have money. They decided to go home to accused-appellant's house. But, Imbong said, at the corner of DYCP, accused-appellant decided to stay behind because he wanted to pass by a particular house. Imbong was shown a photograph (Exh. 6) of complainant's house which he identified as the one they had been to. Accused-appellant told Imbong to wait, but the latter said he wanted to go home and left.[17]

Witness PO3 Tupas testified that on April 1, 1999, at around 4:38 p.m., complainant and her two daughters went to their office and filed a complaint for Trespass to Dwelling, Grave Threats, and Physical Injuries. After

recording the incident in the police blotter, he went with two other policemen to complainant's house and conducted an investigation. They discovered that the intruder had gained entry to complainant's house by breaking the sliding window of the bathroom. The intruder proceeded to the second floor, where the room of complainant's daughter, Carmen, was located, and then passed through the main door of the house to go to complainant's room inside the store located outside the main house.[18]

On rebuttal, complainant vehemently denied accused-appellant's claim that they had a relationship. She testified that in December 1998, when accused-appellant claimed they had a tryst, she was in Manila for a medical check-up and that she did not return to Bacolod until mid-January of the following year. She claimed that, since accused-appellant was in her class in Grade 1, she did not meet him again until the morning of April 1, 1999, when the rape took place.[19]

SPO3 Mojica testified that accused-appellant fled to his mother's hometown in Tapaz, Capiz upon learning that a complaint for rape against him was filed. He stayed there until he was arrested on October 11, 1999 by members of the Presidential Anti-Organized Crime Commission.[20]

The trial court found the prosecution evidence more credible and held accused-appellant guilty of rape. The dispositive portion of its decision states:

> "WHEREFORE, finding accused Hilgem Nerio y Giganto guilty beyond reasonable doubt of Rape under Republic Act 8353 (Amending Article 335 of the Revised Penal code and Republic Act 7659), judgment is hereby rendered sentencing him to suffer Reclusion Perpetua, as well as the accessory penalty provided by law. Accused is further ordered to pay the private offended party Vilma Concel y Mijares: P50,000.00 as civil indemnity for the rape; P50,000.00, moral damages; and P50,000.00 exemplary damages.
>
> Accused being detained by reason of the instant case, the period of his preventive imprisonment shall be credited in his favor and deducted fully from the service of his sentence even if penalized with reclusion perpetua (People vs. Corpuz, 231 SCRA 480), provided he has agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners in accordance with Article 29 of the Revised Penal Code.
>
> SO ORDERED."[21]

Hence this appeal.

Accused-appellant contends:

> "I.
>
> THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT DESPITE THE EXISTENCE OF DOUBT AS TO HOW PRIVATE COMPLAINANT POSITIVELY IDENTIFIED ACCUSED-APPELLANT.
>
> "II.
>
> THE COURT A QUO ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF INSULT OR IN DISREGARD OF THE RESPECT DUE TO THE OFFENDED PARTY ON ACCOUNT OF HER RANK AND AGE."[22]

FIRST. Accused-appellant contends that he was not identified as the man who had raped complainant on the night of April 1, 1999 and that there are grave doubts whether she really recognized him on that occasion. Although complainant said that she recognized accused-appellant as the person who had raped her, she did not describe the man who had abused her to the investigating officer when she reported the incident to the police. In fact, accused-appellant claims, complainant even testified that she did not recognize the face of her abuser.[23]

Accused-appellant also finds it unbelievable that complainant can identify him as her abuser when she claimed on rebuttal that she only saw him in the morning of April 1, 1999. Even if he was complainant's pupil in Grade 1, he argues that his physical appearance had changed considerably since then. He maintains that complainant was able to identify him only through the picture which was supplied by his (accused-appellant's) father and shown to her at the police station.[24]

Finally, accused-appellant claims that complainant has poor eyesight. She could not even read the affidavit that she executed (Exh. 4) when it was shown to her in court. Considering her defective eyesight and the fact that it was improbable that she was wearing glasses when she was raped, it is doubtful whether she really recognized the assailant's face.[25]

As the Solicitor General points out, however, complainant did not say that she did not recognize the face of her rapist. Her testimony on this point is as follows:

> "COURT:
>
> Q The question of the counsel is why did you not tell the police that it was the accused who raped you instead you said you did not recognize?
>
> A I knew him by face.
>
> ATTY. DE LA FUENTE:
>
> Q: Is it not a fact that you earlier said that you already knew him as Hilgem Nerio?
>
> A: By face.
>
> FISCAL YNGSON:
>
> We object there is no mention of the name.
>
> ATTY. DE LA FUENTE:
>
> He said earlier. He already knew him as Hilgem Nerio.
>
> COURT :
>
> He even pointed to the accused. Let the witness answer.
>
> A Upon seeing his face I already knew his name as Hilgem Nerio.
>
> ATTY. DE LA FUENTE
>
> Q So you know his face and his name as Hilgem Nerio, is that correct?


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A Yes, ma'am."[26]

Thus, complainant was able to see the face of her accused-appellant. Indeed, her testimony is consistent with the two complaints she filed. In her first complaint for qualified trespass to dwelling, physical injuries, and grave threats, complainant stated that an unidentified person broke into her house, went into her room, poked a knife at her, and threatened to kill her if she shouted. In her second complaint with the additional charge of rape, complainant again stated that she did not know the identity of her abuser but said that she would be able to positively identify him if she saw him again. When SPO3 Mojica showed her a photograph of accused-appellant, she broke down and stated that the man in the photograph was the same man who had raped her.[27] Complainant recalled to SPO3 Mojica that some of her neighbors had been victimized in the same manner by an unidentified person, but they did not file complaints against him. Complainant wanted to be sure the intruder who had raped her was the person her neighbors complained against. Acting upon his lead, SPO3 Puentebella made inquiries and asked accused-appellant's father for a photograph of his son. SPO3 Puentebella made this request so he could show the picture to complainant.[28]

Accused-appellant's contention that complainant could not have identified him after he became her pupil in Grade 1 because his physical appearance had changed since then is without merit. Complainant recognized accused-appellant not because he was once her former pupil but because she had seen his face on the date in question. This is the reason she was able to identify accused-appellant when his photograph was shown to her.

Accused-appellant's claim that complainant's poor eyesight made it impossible for her to see her assailant's face clearly is flimsy. Accused-appellant made this conclusion on the basis of complainant's inability to read the affidavit shown to her during the trial of November 22, 1999 because she did not have her eyeglasses. It does not necessarily follow, however, that if complainant was unable to read without her eyeglasses, she would likewise be unable to see the face of her attacker, especially if he was on top of her as he raped her. Complainant testified that after accused-appellant undressed her, she saw him remove his clothes. Accused-appellant held a knife in his left hand and poked it at her.[29] She likewise stated in her complaint that she would be able to positively identify her abuser if she saw him again. Thus, complainant saw accused-appellant's face on the night that she was sexually abused.

Accused-appellant also cites alleged inconsistencies in the testimony of complainant. Accused-appellant asks why she did not tell everything to the police the first time she reported the incident. And if she had been told the whole story, why did Carmen, complainant's daughter, not disclose the rape to the police if her mother was reluctant to do so? From these questions, which allegedly were not answered satisfactorily by the prosecution, accused-appellant makes the inference that both complainant and her daughter in fact knew the person who entered their house that morning but they hid his identity and did not immediately report the incident to the police.[30]

Accused-appellant's arguments have been sufficiently answered by the trial court which held:

> "The fact that in her first report to the police of the incident as entered in the police blotter of April 1, 1999(Exh. "1") did not mention the rape did not in any way mean that the crime was not committed since the sexual contact was insolently admitted by accused Nerio. Besides, it was satisfactorily explained by complainant that during first report, she and her daughter Carmen who went with her to the police station were extremely nervous and she was overwhelmed by your traumatic experience that she failed to mention about the rape, This was heightened by the inexpressible shame and embarrassment of reporting the sordid detail of her ravishment from the hands of her attacker to a male police officer, PO3 Althamar Tupas who made the booking.
>
> x x x x x x [31]


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Complainant, an old lady, was ashamed to tell the police that she had been raped. She went to the police station three times, but it was only on the third time, on April 3, 1999, when she mustered enough courage to tell her story.

This Court has upheld the conviction of an accused for rape even if the complainant disclosed the incident only after several days or even months after the occurrence.[32] The two-day delay in reporting the rape incident in this case cannot undermine the charge against accused-appellant as it was shown that the delay is grounded on his threats that he would kill complainant if she shouted and that he would return the next day.[33]

Accused-appellant alleges that there are glaring inconsistencies between complainant's affidavit and her testimony in court. The alleged inconsistencies are minor and merely refer to trivial details which may have been caused by the natural fickleness of memory. They tend to strengthen, rather than weaken, the credibility of the prosecution witness because they erase any suspicion of a rehearsed testimony.[34]

Indeed, the details contained in complainant's affidavit (Exh. "4") and in her testimony on direct and cross-examination are substantially consistent with one another. What is crucial is that complainant's affidavit and testimony on direct and cross-examination as a whole agree on all the essential facts and give a coherent picture of the sordid events that happened in the morning of April 1, 1999.

Accused-appellant alleges that complainant added other details during her cross-examination although she affirmed the contents of her affidavit. There is actually no inconsistency. Complainant was more detailed in her testimony in court because more questions were asked. In one case, we ruled:

> "Generally an affidavit is not prepared by the affiant himself, but by another person who uses his own language in writing the affiant's statements. Omissions and misunderstandings by the writer are not infrequent particularly under circumstances of hurry and impatience. For this reason, the infirmity of affidavits as a species of evidence is much a matter of judicial experience."[35]

We have many times ruled that when the question of credence as to which of the conflicting versions of the prosecution and defense should be believed the trial court's findings are generally accorded with respect because it has seen the way the witness testified and observed them while testifying.[36] Unless shown that it has overlooked some facts which would affect the result of the case, the trial court's factual findings will not be disturbed by the appellate court.[37] The trial court arrived at a judgment of conviction by relying on the testimony of complainant. The trial court held:

> "Prudently, judiciously, objectively and meticulously evaluating, analyzing, calibrating and going through the finer points of the evidence adduced by a contending parties on the charge of rape by complainant Vilma Concel viz-a-viz the audacious admission by accused Hilgem Nerio of voluntary sexual tryst with complainant anchored on "sweetheart defense," we find in favor of the prosecution. There is a total dearth of raison d' etre for us to be skeptical of the credibility of private complainant who is a venerable grandmother of 70, a retired public school teacher, a purok president and a recipient of the plum as one of the 1994 Outstanding Mothers of Negros Occidental (province)."[38]

The trial court, characterizing complainant's testimony as simple but candid, straightforward, and sincere, found it more worthy of belief than accused-appellant's testimony. This is in keeping with settled jurisprudence that since rape is essentially an offense of secrecy, not generally attempted except in dark or deserted and secluded places away from prying eyes, a complaint arising from the crime usually commences solely upon the word of the woman herself, and conviction invariably hangs only upon her credibility as the People's single witness of the actual occurrence.

Accused-appellant asserts that the trial court showed its bias by believing complainant's explanation that the

reason she did not initially report the rape to the police was because she was ashamed. Her claim that she did not want to make a report to a policeman was flimsy because she could have been referred to a female investigator at the Women's and Children's Desk, which was specifically set up to handle cases of this nature.[39] But did complainant know this? Could she have for a female investigator when by doing so she would be letting the male investigators know exactly what she did not want them to know? These are questions which she should have been asked during the cross-examination and not only now on appeal.

Indeed, complainant's testimony that accused-appellant forced himself upon her, that he threatened her with a knife, and that she tried to protect herself and in so doing suffered cuts in the palm of her right hand remain unchallenged despite all of accused-appellant's sophistry. As the trial court found:

> "The circumstances of force and intimidation with the use of a bladed weapon in the perpetration of rape as charged in the Information attending the instant case were manifested clearly not merely in the victim's testimony but also in the physical evidence presented during trial, i.e., the medico-legal report showing three (3) laceration in the right palm of the said victim. These injuries were sustained by her while trying to wrest away the knife from her sexual attacker and exerting efforts to disengage herself from the sexual anchorage. Such piece of evidence is more eloquent than a hundred witnesses. The fact of carnal knowledge is not disputed; it is in fact admitted. Moreover, it was positively established through the offended party's own testimony and corroborated by that of her examining physician."[40]

In her medical report (Exh. B), Dr. Cherryl C. Gumahin stated that complainant had a 0.2 cm. partial tear at the 11 o'clock position in the hymenal area with hyperenia of the vulvar area (Exh. B-1).[41] She testified that these could have been caused by a blunt object, such as a penis. She also found lacerations measuring 2 cm., .5 cm. and .3 cm. on complainant's right hand. According to Dr. Gumahin, these lacerations could have been caused by a sharp instrument, like a knife.[42]

Indeed, the defense has utterly failed to show why complainant, a septuagenarian in the twilight of her life, a widow, and a mother of eleven children, who testified not knowing accused-appellant except when she was his Grade 1 teacher, would file such a malicious charge against him. Verily, a rape victim would not publicly disclose that she has been raped and undergo the trouble and humiliation of a trial if her motive was not to bring to justice the person who had abused her.[43]

In this case, complainant was 70 years old when the attack occurred. She was, and is, respected not only in the community, having once been a candidate of their barangay, but in the entire province of Negros Occidental, being one of the recipients of an awards as Outstanding Mother of the said province. Why would she take interest in prurient matters and even want to engage in a sexual liaison when ladies of her age and station in life are turning their thoughts to virtues? Accused-appellant would want this Court to believe that complainant was a sex-starved old woman who found accused-appellant, then 28 years of age, so virile and irresistible that she showed sexual aggressiveness even in their first encounter. She allegedly grabbed his groin and helped him attain erection by performing oral sex on him. Indeed, the picture painted of her by accused-appellant is that of the equivalent of the dirty old man. We cannot believe this fantasy.

The same thoughts appear to have crossed the mind of the trial judge. Now, accused-appellant asks why a young and exceedingly virile male like him would prefer to have sex with a 70-year old woman when her younger daughter was easily accessible. The answer is: Probably he would not have done this had he not just been to a drinking bout with a friend which lasted from 7:00 p.m. of the previous night up to 1:00 a.m. of the next day, when he committed the crime.

As to why accused-appellant did not molest complainant's daughter, whose room he passed in going to the store, SPO3 Mojica found that the intruder had first tried to open the door of complainant's daughter's room on the


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second floor. Finding that it was locked, he proceeded to open the door of the next room. After seeing that it was empty, he proceeded to the ground floor.[44] Thus, accused-appellant did indeed try to reach complainant's daughter first, contrary to what he claims. Finding her to be inaccessible, accused-appellant opted to look for complainant.

As to why he took a longer route going to complainant, a possible reason can be given for such behavior. He could have had robbery in mind when he entered the main house. In fact, his companion, Allan Imbong, testified that they wanted to eat after their drinking spree, but accused-appellant did not have money. Accused-appellant told him to wait while he dropped by complainant's house.[45] SPO3 Mojica theorized that accused-appellant tried to enter several rooms in the house before finally going to complainant's room because he wanted to rob the place.

SECOND. It is charged that the trial court was so prejudiced against accused-appellant that it ignored and even refused to listen to the latter's version of the incident and placed on him the burden of proving his innocence. Accused-appellant avers that the court erred in finding that the bathroom window through which the intruder passed was made of louvers of jalousies, as testified to by SPO3 Mojica, when, according to PO3 Tupas, it was an old single glass window with a wooden cross brace. According to accused-appellant, because of these conflicting descriptions of the window, the court should have conducted an ocular inspection of the house. Accused-appellant filed a Motion for Ocular Inspection, which would have shown that neither of the two police officers' descriptions of the bathroom window was correct and that it was in fact made of a single broken glass which would not allow entrance even of a child's head. Accused-appellant argues that such finding would also have proved his defense that he was familiar with the interior of complainant's room because he was a frequent visitor there.[46]

SPO3 Mojica categorically stated that the bathroom window was of the jalousie type and that the intruder gained entry into the house by detaching three glass louvers of the jalousie window. Accused-appellant was given the opportunity to controvert this fact and he, in fact, did so by describing in detail the features of complainant's room. But the trial court was not convinced. It denied accused-appellant's motion for ocular inspection in the interest of conducting a speedy trial. The trial court had the opportunity to hear accused-appellant's testimony and to observe his demeanor while testifying. It did not attach any significance to these particular defenses presented by accused-appellant. We find no cogent reason to disturb the trial court's findings on these points.

THIRD. Accused-appellant makes much of the statement in the medical report that complainant "claims to have had no penile penetration but the penis was noted to enter only on vaginal opening. No ejaculation." Accused-appellant argues that, if there was neither penile penetration by force nor ejaculation, then there was no rape. Suffice it to say that neither complete penetration nor ejaculation is required to consummate rape. What is material is that there is penetration no matter how slight of the female organ.[47] The mere introduction of the male organ into the labia of the pudendum is sufficient. That there was penetration in this case was proven by the testimony of the complainant. She testified that accused-appellant inserted his penis into her vagina and made the coital movement for about five to ten minutes. As we have long held, when a woman says that she has been raped, she says in effect all that is necessary to show that rape has been committed. Her testimony is credible where she has no motive to testify falsely against the accused, as in the case at bar.

In any event, even granting that he and complainant had really been sweethearts, that fact alone would not negate the commission of rape. A sweetheart cannot be forced to have sex against her will. Love is not a license for lust.[48] Not even a past sexual relationship between the parties is a defense to a rape.[49]

The conduct of complainant immediately after the alleged rape as well as accused-appellant's behavior upon learning that a complaint for rape had been filed against him is significant. Immediately after the sexual assault,

complainant told her daughters about the incident, went with them to the police station to file a complaint, and submitted herself to a difficult and humiliating physical examination during which she exposed her private parts to a stranger. This fact belies accused-appellant's claim that complainant agreed to have sexual intercourse with him.[50]

Accused-appellant, on the other hand, upon learning that a complaint for rape had been filed against him on April 5, 1999, fled and went into hiding in his mother's hometown and later stayed with his sister. He hid there for six months and six days until he was arrested on October 11, 1999. Accused-appellant claims that he fled and hid because he was afraid. We are not convinced by accused-appellant's self-serving explanation. We have repeatedly held that the flight of an accused signifies an awareness of guilt and a consciousness that he had no tenable defense against the rape charge.[51]

FOURTH. Accused-appellant contends that the trial court erred in appreciating the aggravating circumstance of insult or disregard of the respect due to the offended party on account of her rank and age. He claims that, other than the bare allegation that she is 70 years old and a retired public school teacher, there is no proof that he deliberately intended to offend or insult complainant's rank or age.

We hold that the trial court properly appreciated the existence of the aggravating circumstance of insult or disregard of the respect due to the offended party on account of her rank and age. Accused-appellant knew that complainant was his Grade 1 public school teacher and was already quite old. Indeed, these facts were admitted by accused-appellant in the stipulation of facts embodied in the pre-trial order which he signed.[52] As the Solicitor General observes, accused-appellant was fully aware that he was raping his old teacher. That complainant had already retired from the service as a teacher did not diminish the respect due her rank as a former Grade 1 teacher of accused-appellant.

In analogous cases, rank aggravated the murder by a pupil of his teacher[53] and the assault upon a 66-year old District Judge of the Court of First Instance by a justice of the peace.[54] On the other hand, age aggravated the murder of the victim, who was 65 years old, by her offenders, aged 32 and 27.[55] It was also appreciated in the killing of a 73-year old man by a 27-year old assailant.[56]

Under Art. 266-A, par. 1(a) of the Revised Penal Code, as amended by R.A. No. 7659 and R.A. No. 8353, rape is committed by a man who shall have a carnal knowledge of a woman through force, threat, or intimidation. Article 266-B provides that rape under paragraph 1 of Article 266-A shall be punished with reclusion perpetua to death whenever the rape is committed with the use of a deadly weapon. The use by accused-appellant of a bladed weapon when he raped complainant was alleged in the information and sufficiently proven in this case. Under Article 63 of the Revised Penal Code, in all cases in which the law prescribes a penalty composed of two indivisible penalties, and the crime was committed with the presence of one aggravating circumstance, the greater penalty shall be applied. Considering the presence in this case of the aggravating circumstance of insult or disregard of the respect due the offended party on account of her age and rank, the sentence reclusion perpetua imposed by the trial court should be changed to the penalty of death.

Four (4) members of the Court, although maintaining their adherence to the separate opinions expressed in People vs. Echagaray[57] that R.A. No. 7659, insofar as it prescribes the penalty of death, is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

The award of civil indemnity of accused-appellant in the amount of P50,000.00 should be increased to P75,000.00. This is in line with current case law,[58] that if the crime is qualified by circumstances which warrant the imposition of the death penalty by applicable amendatory laws, the accused should be ordered to pay the

complainant the amount of P75,000.00 as civil indemnity. The award of P50,000.00 as moral damages is in accordance with recent rulings.[59] As to the award of exemplary damages, we held in People vs. Catubig[60] that the presence of an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to an award of exemplary damages. Hence, the award of exemplary damages by the trial court is proper, but the same should be reduced to P25,000.00 in line with the ruling in Catubig.

WHEREFORE, the decision of the trial court is AFFIRMED with the MODIFICATION that accused-appellant is sentenced to suffer the maximum penalty of DEATH. He is likewise ordered to pay complainant P75,000.00 as civil indemnity, and, in addition, P50,000.00 as moral damages, P25,000.00 as exemplary damages, and the costs.

In accordance with Section 25 of R.A. No. 7659, amending Art. 83 of the Revised Penal Code, upon the finality of this decision, let the records of this case be forthwith forwarded to the President of the Philippines for the possible exercise of the pardoning power.

**SO ORDERED.**

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

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[1] Penned by Judge Edgar G. Garvilles

[2] TSN, Nov. 22, 1999, pp. 3-6.

[3] Records, p. 82. See Exh. F and G.

[4] TSN, Dec. 7, 1999, p. 53.

[5] Rollo, p. 9.

[6] Pre-trial Order, p. 1; Records, p. 26.

[7] TSN, Nov. 22, 1999, pp. 8-10. See also Investigation Report (Exh C.), Records, p. 48.

[8] TSN, Nov. 22, 1999, pp. 10-14.

[9] Id., pp. 15-16.

[10] Id., pp. 16-18; 52-54.

[11] Id., pp. 65, 82-83.

[12] Id., pp. 19-20; TSN, Nov. 29, 1999, pp. 16-22. See also Exhibits 3-A and 3-B.

[13] TSN, Nov. 22, 1999, pp. 37, 56, 71-74, and 86. See Investigation Report (Exh. C), Records, p. 48. See also TSN, Dec. 7, 1999, p. 39.

[14] TSN, Dec. 7, 1999, pp. 56-64.

[15] Id., pp. 67-77.

[16] Id., pp. 77-91.

[17] TSN, Dec. 7, 1999, pp. 5-14.

[18] Id., pp. 26-41.


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[19] TSN, Jan. 11, 2000, pp. 2-4.

[20] Brief for the Accused-Appellant (Public Attorney's Office, Bacolod City District Office), p. 9; Rollo, p. 64.

[21] Decision, p. 17; Rollo, p. 34.

[22] Brief for the Accused-Appellant (Department of Justice, Public Attorney's Office, Quezon City) p. 1; Rollo, p. 131.

[23] Id., p. 10; id., p. 140.

[24] Ibid.

[25] Brief for the Accused-Appellant (Department of Justice, Public Attorney's Office, Quezon City) p. 12; Rollo, p. 142.

[26] TSN, Nov. 22, 1999, pp. 54-55.

[27] Rollo, p. 105.

[28] TSN, Nov. 22, 1999, p. 83-85.

[29] Id., 33-35.

[30] Brief for the Accused-Appellant (Public Attorney's Office, Bacolod City District Office), pp. 16-19, Rollo, p. 71-74.

[31] Decision, p. 9; id., p. 26.

[32] People vs. Cervantes, 265 SCRA 832 (1996).

[33] See People vs. Talaboc, 256 SCRA 441 (1996).

[34] Ibid.

[35] People vs. Patilan, 197 SCRA 354 (1991).

[36] People vs. Carson, 204 SCRA 266 (1991), citing People vs. Eguac, 80 SCRA 665 (1977).

[37] People vs. Hinto, G.R. No. 138146-91, February 28, 2001, citing People vs. Tan, 264 SCRA 425, 445 (1996).

[38] Decision, p. 8; Rollo, p. 25.

[39] Brief for the Accused-Appellant (Public Attorney's Office, Bacolod City District Office), p. 34; Rollo, p. 89.

[40] Decision, p. 13; id., p. 30.

[41] See also TSN, Nov. 29, 1999, p. 16.

[42] TSN, Nov. 29, 1999, p. 16-21.

[43] People vs. Domingo, 226 SCRA 156 (1993).

[44] Investigation Report (Exh. C), Records, p. 48.

[45] TSN, pp. 9-11, Dec. 7, 1999.

[46] Brief for the Accused-Appellant (Public Attorney's Office, Bacolod City District Office), pp. 33-34; Rollo, pp. 88-89.

[47] People vs. Faigano, 254 SCRA 10 (1996).

[48] People vs. Domingo, 226 SCRA 156 (1993), citing People vs. Tismo, 204 SCRA 535 (1991).

[49] People vs. Sarellana, 233 SCRA 31 (1994).

[50] See People vs. Domingo, 226 SCRA 156 (1993), citing People vs. Cruz, 203 SCRA 682 (1991).

[51] People vs. Sarellana, 233 SCRA 31 (1994); People vs. Cruz, 165 SCRA 130 (1988).

[52] See Pre-trial Order, p.1; Records, p. 26.

[53] U.S. vs. Cabling, 7 Phil 469 (1907).

[54] People vs. Rodil, 109 SCRA 308 (1981).

[55] People vs. Zapanta and Tubadea, 107 Phil 103 (1960).

[56] People vs. Rubio, 257 SCRA 528 (1996).

**[57] 267 SCRA 682 (1997).**

[58] People vs. Brondial, G.R. No. 135517, October 18, 2000; People vs. Sancha, 324 SCRA 646 (2000); People vs. Alba, 305 SCRA 811 (1999).

[59] People vs. Nunez, 310 SCRA 168; People vs. Narido, 316 SCRA 131 (1999).

[60] G.R. No. 137842, August 23, 2001.

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