

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOROTEO ABAÑO, ACCUSED-APPELLANT.*G.R. No. 142728. January 23, 2002*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-142728/>**PER CURIAM:**

In a Decision[1] dated January 18, 2000, the Regional Trial Court, Branch 52, Puerto Princesa City, Palawan found appellant Doroteo Abaño guilty of raping Judelyn Abaño (“Judelyn” for brevity), his then six-year old daughter. The trial court imposed the supreme penalty of death and ordered appellant to pay Judelyn the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages. This case is now before us on automatic review.

The Information against appellant reads:

“That on or about the 15[th] day of August, 1996, at around 11:30 o’clock in the evening, at Barangay Liminangcong, Municipality of Taytay, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, and with force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his own daughter, one JUDELYN ABAÑO, a six (6) year old girl, against her will and consent to her damage and prejudice.

CONTRARY TO LAW.”[2]

On January 31, 1997, appellant, with the assistance of counsel, pleaded not guilty to the charge.[3] Thereupon, trial ensued.

The prosecution presented as its witnesses Judelyn, the complainant; Dr. Nestor A. Reyes (“Dr. Reyes” for brevity), Chief of Hospital, Taytay District Hospital, Taytay, Palawan; and Annabelle Fuentes (“Fuentes” for brevity), a neighbor of the Abaños. The prosecution also adduced documentary evidence. The defense presented appellant as its lone witness and offered no documentary evidence.

The Office of the Solicitor General recounts the prosecution’s version of the rape allegedly perpetrated by appellant against his own daughter, to wit:

“Complainant Judelyn Abaño is the daughter of accused-appellant Doroteo Abaño and Erlinda Areglado. Erlinda, the mother, died when complainant was only three (3) years old. Accused-appellant single-handedly took care of Judelyn and her younger brother, Jonathan. They lived at Barangay Liminangcong, Taytay, Palawan (TSN, Nov. 11, 1997, pp. 3-4; April 28, 1998, p. 4; Sept. 15, 1998, pp. 3-4 and 11).

At 11:30 in the evening of August 15, 1996, Judelyn was awakened when she felt accused-appellant was undressing her. He was already naked. Then, he mounted her and forced himself on her. Due to intense pain, she shouted “Ate Annabelle, tulungan mo ako.”

Annabelle Fuentes was a neighbor, married with five (5) children. Upon hearing Judelyn’s anguished plea, she rushed to their house, which was only a meter away. Accused-appellant told her that Judelyn merely had a bad dream. When he went back to Judelyn, he threatened to kill her should she report the incident to anybody

(TSN, Nov. 11, 1997, pp. 8-13; April 28, 1998, pp. 17-19).

The next day, Annabelle Fuentes saw Judelyn walking with difficulty (“paika-ika”) with her legs spread quite apart. Annabelle confronted Judelyn of her peculiar gait, who simply replied “masakit, mahapdi.” She recalled that, in the previous nights, Judelyn shouted, too. Eventually, Judelyn confided to her what accused-appellant did to her (TSN, April 28, 1998, p. 19-24).

On August 18, 1996, Sister Nena Labrague (or Labrate) of the Agustinian Order borrowed Judelyn from accused-appellant on the pretext that Judelyn had to be examined for her skin disease. However, on August 20, 1996, she was brought to the Taytay District Hospital for physical and medical examination. Dr. Nestor A. Reyes, Chief Resident, found old healed hymenal lacerations at 3 o’clock and 9 o’clock (Exh. C). Judelyn gave her sworn statement to the police; she was assisted by her maternal aunt Dionisia Areglado and Annabelle Fuentes (TSN, Nov. 11, 1997, pp. 13-16; April 28, 1998, pp. 22-23; Sept. 15, 1998, p. 13).”[4]

Appellant denied the charge that he raped his own daughter. He testified that on the night of August 15, 1996, he and his two children, Judelyn and Jonathan, watched Betamax at the house of his Tiyo Doring Anteza. At around 11:00 p.m., they decided to go home. Appellant, Judelyn and Jonathan then slept, with appellant sleeping in the middle of his two children. Appellant claimed that he and Jonathan were roused from their sleep when Judelyn began to shout as she was apparently having a nightmare. Judelyn then went back to sleep again. The morning after, August 6, 1996, appellant went to his work as a “cargador” (stevedore) at the pier.

On January 18, 2000, the trial court issued a judgment of conviction, the dispositive portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered finding the accused Doroteo Abaño guilty beyond reasonable doubt as principal of the crime of rape and appreciating the qualifying circumstance that the victim is under eighteen (18) years of age and the accused is the legitimate father of the victim and pursuant to Section 11 of R.A. No. 7659, he is hereby sentenced to Death by Lethal Injection with the accessory penalties provided under Article 40 of the Revised Penal Code. For the civil liability he is further ordered to indemnify the victim the amount of P50,000.00 in line with existing jurisprudence, P50,000.00 as moral damages and to pay the costs.

SO ORDERED.”[5]

Appellant now seeks his acquittal on the sole ground that:

“THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.”[6]

Appellant maintains that he is innocent of the crime charged. He insists that the trial court failed to apply the three principles in reviewing evidence in rape cases, to wit:

“(1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.”[7]

Appellant implores us to apply the foregoing principles to this case.

Appellant is convinced that Judelyn’s testimony lacks the elements of truthfulness. He points out that Judelyn testified that she did not see the person who removed her clothes. He then argues that if it was true that it was he, the father of Judelyn, who removed her clothes, she should have immediately recognized him.

Appellant claims that Judelyn accused him of rape because he always whipped her and wanted her out of the

house. He believes that had the trial court considered the points he now raises, he would have been acquitted, as there is reasonable doubt as to his guilt.

We are not persuaded. We have carefully examined the records of this case and find nothing to warrant a reversal of the trial court's finding of guilt.

Rape is a charge that is fairly easy to make but difficult to prove. Courts have applied the three guiding principles in reviewing evidence in rape cases. While the trial court in this case did not cite in its decision these three guiding principles, nonetheless, it based its judgment of conviction on evidence that proved beyond reasonable doubt that appellant indeed raped his own daughter. The trial court convicted appellant on the basis of the following: (1) Judelyn's credible testimony of the rape; (2) Judelyn's positive identification of appellant as the one who raped her; (3) physical evidence consistent with Judelyn's assertion that she was raped; and (4) the absence of ill-motive on Judelyn's part in filing the charge of rape.

Between the conflicting versions of Judelyn and appellant, the trial court gave more credence to Judelyn's assertion that appellant raped her. Appellant disputes the trial court's ruling on credibility and exhorts us to overturn it.

Jurisprudence is clear that when the issue boils down to credibility, the trial court judge is in a better position to determine credibility because he has observed first hand the demeanor and deportment of the witnesses.[8] As a rule, appellate courts will not disturb the findings on the credibility, or lack of it, accorded by the trial court to the testimony of witnesses, unless it is clearly shown that the trial court has overlooked or disregarded arbitrarily certain facts and circumstances of significance in the case.[9] There is no such showing in this case.

A reading of the transcript of Judelyn's testimony will readily reveal a straightforward and categorical narration of the details of the rape. Judelyn testified that:

“FISCAL ESTOLANO:

Do you know that you have filed a case for rape against your father Doroteo Abaño?

A:

Yes, sir.

Q:

This incident happened in the evening of August 15, 1996?

A:

Yes, sir.

COURT:

(Take note that the witness is crying).

FISCAL ESTOLANO:

And because of this you filed a case against him?

A:

Yes, sir.

Q:

And that complaint is in writing?

A:

Yes, sir.

Q:

You said you filed a case against your father, here is a complaint, is this the complaint you are referring to?

A:

Yes, sir.

FISCAL ESTOLANO:

For purposes of identification we move that the complaint sheet be marked as Exhibit A, Your Honor.

COURT:

(to clerk of court)

Mark it.

FISCAL ESTOLANO:

In your complaint there are two (2) thumbmarks above the name Judelyn Abaño, is this your thumbmark?

A:

Yes, sir, that is my thumbmark.

FISCAL ESTOLANO:

And the two (2) thumbmarks above the name Judelyn Abaño be marked as Exhibit A-I, Your Honor.

COURT:

(to clerk of court)

Mark it.

FISCAL ESTOLANO:

You have an auntie by the name of Dionisia Areglado?

A:

Yes, sir.

Q:

Is this her signature that appears above her name?

A:

Yes, sir.

Q:

Did you see her when she signed her name?

A:

Yes, sir.

FISCAL ESTOLANO:

(to court)

And the handwritten name above the typewritten name Dionisia Areglado be marked as Exhibit A-2, Your Honor.

COURT:

(to clerk of court)

Mark it.

FISCAL ESTOLANO:

This complaint sheet is in English, was this interpreted to you in Tagalog by your auntie Dionisia Areglado?

A:

Yes, sir.

FISCAL ESTOLANO:

(to court)

The facts of the case Your Honor be bracketed and marked as Exhibit A-3.

COURT:

(to clerk of court)

Mark it.

FISCAL ESTOLANO:

This complaint when explained to you, you said that these were the actual things that happened to you?

A:

Yes, sir.

Q:

As it says here August 15, 1996 at around 11:30 in the evening at Liminangcong that the accused committed the rape against you?

A:

Yes, sir.

Q:

How did your father Doroteo Abaño abuse you?

A:

He removed my dress.

FISCAL ESTOLANO:

Were you wearing panty that night?

A:

Yes, sir.

Q:

How about your panty, did Doroteo Abaño remove your panty?

A:

Yes, sir.

Q:

After your dress and panty were removed by Doroteo Abaño, what did Doroteo do to you?

A:

He placed his male organ into my female organ.

Q:

When you said he placed inside, he inserted inside?

A:

Yes, sir.

Q:

After that what did he do?

A:

He placed himself on top of me.

Q:

Aside from placing himself on top of you, what else was he doing?

A:

I shouted.

Q:

When you shouted, what did he tell you?

A:

I asked help from my auntie Anabel our neighbor.

FISCAL ESTOLANO:

Is it near your house, the house of Annabel?

A:

Yes, sir.

Q:

Where you are now, how far is the house of your auntie Annabel from your house?

NOTE:

Witness pointed to a distance almost 1 meter.

FISCAL ESTOLANO:

You shouted for help from your auntie Annabel, did your auntie help you?

A:

Yes, sir.

Q:

Was she able to enter your house or only outside?

A:

She just stayed outside our house because my father closed the door and she cannot enter the house.

Q:

After your father as you said inserted his penis into your vagina and placed himself on top of you, did he make any pumping motion?

A:

Yes, sir.

FISCAL ESTOLANO:

What did you feel when your father inserted his penis inside your vagina and made pumping motion?

A:

I felt pain inside my vagina.

Q:

How long did the pumping motion of your father last?

A:

It did not last for a long time.

Q:

After your father made pumping motion, what happened?

A:

He told me that if I will report this matter to anybody, he will kill me.

Q:

After a few days, do you remember that sister Nena Labrate took you from your father?

A:

Yes, sir.

Q:

That you were brought before a doctor?

A:

Yes, sir.

Q:

And the doctor examined your vagina?

A:

Yes, sir.”[10]

Judelyn’s testimony undoubtedly shows that appellant had carnal knowledge of her. At the time Judelyn testified, she was only seven years old, and yet, she withstood the rigors of testifying in court to give a plain account of the rape. Judelyn’s entire testimony can only be described as forthright. At one point, the child-victim even broke down and cried. We have repeatedly held that the testimonies of rape victims who are of tender age are credible.[11] The revelation of a six-year old child whose chastity was abused deserves full credit as her willingness to face police investigation and to undergo the trouble and humiliation of public trial is eloquent testimony of the truth of her complaint.[12]

Appellant casts doubt on Judelyn’s testimony by pointing out that if he was the one who raped her, she should have easily identified him as also the one who undressed her. Appellant’s contention is baseless. He conveniently selected portions of Judelyn’s testimony to suit his defense.

It was during cross-examination that Judelyn was asked if she saw the face of the man who undressed her.[13] Judelyn answered that she did not.[14] However, during re-direct examination, Judelyn stated that she was certain that it was appellant, her father, who raped her because she saw his face.[15] Judelyn’s entire testimony is not perfect in all details but as to material points, she remained consistent and unequivocal. Judelyn repeatedly pointed to appellant as the one who raped her. The lapse, if at all, is a minor one that even tends to erase the suspicion that Judelyn’s testimony is rehearsed. We have to accord ample margin of error and understanding to young witnesses such as Judelyn, who much more than adults, would be gripped with tension due to the novelty of the experience of testifying before a court.[16] To Judelyn’s credit, she remained consistent and unwavering notwithstanding the punishing cross-examination she had to go through.

Judelyn’s credibility is further strengthened by the fact that she has no improper motive or dubious reason to implicate her own father to a crime for which he could lose his life. Even appellant admitted in court that he does not know why Judelyn imputed the crime to him.[17] He also acknowledged that he has harmonious relationships with Fuentes, a neighbor, and Dionisia Areglado, his sister-in-law,[18] the persons whom he perceived encouraged Judelyn to file the case against him. We are therefore not convinced by appellant’s insinuation that Judelyn fabricated the charge of rape to get back at him for whipping her and wanting her out of the house. Judelyn’s resolve in accusing her own father of rape obviously stems from her desire to seek justice.

We agree with the trial court that the prosecution successfully discharged its burden of proving the elements of the

crime of rape and appellant's culpability for it. Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,[19] provides:

“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 a woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

xxx.”

Hence, when the victim is under twelve years old, carnal knowledge alone is rape.[20] To prove the charge of rape in this case, all that the prosecution must establish is appellant's carnal knowledge of his six-year old victim.

Carnal knowledge was proven in this case. The medical certificate and the testimony of Dr. Reyes, the Chief of Hospital of Taytay District Hospital who issued the medical certificate, corroborate Judelyn's claim that appellant ravished her. The medical certificate states that Judelyn has old healed lacerations of the hymen at 3 o'clock and 9 o'clock.[21] Dr. Reyes explained in court that the insertion of a hard object, possibly a penis, caused the lacerations in Judelyn's hymen. His testimony is as follows:

“Q:

This laceration 3 and 9 o'clock, what could have caused this laceration of the hymen?

A:

Hard object.

Q:

Could it be caused, the laceration by insertion of an adult penis?

A:

It is possible.”[22]

Judelyn's credible testimony and the physician's findings of lacerations sufficiently establish the essential requisite of carnal knowledge.

Another witness of the prosecution was Fuentes, a neighbor of the Abaños, and whom Judelyn fondly refers to as Ate Anabelle. Fuentes testified that at around 11:30 p.m. of August 15, 1996, she heard Judelyn crying and shouting “Ate Annabelle, tulungan mo po ako” (Ate Anabelle, help me).[23] Fuentes then went to the house of the Abaños that was only about a meter away from her house. She asked appellant what was happening to Judelyn. According to Fuentes, appellant answered “nothing is happening”.[24] Fuentes then went back to her house. The following morning, Fuentes saw Judelyn walking with difficulty. Fuentes noticed that Judelyn walked “paika-ika,” with “her feet spread apart.”[25] Fuentes asked Judelyn what was wrong with her and Judelyn replied “masakit, mahapdi” (painful, sore).[26] Fuentes did not witness the actual rape, but her testimony substantiates Judelyn's claim that the rape did occur in the evening of August 15, 1996.

Appellant's only defense is a blanket denial. While denial is a legitimate defense in rape cases, bare assertions to this effect cannot overcome the categorical testimony of the victim.[27] It is an established rule that an affirmative

testimony is far stronger than a negative testimony, especially so when it comes from a credible witness.[28] Judelyn declared with certainty that it was her father who raped her because she saw his face. There is no better way for a victim to get a good look at her rapist than to see him face to face.[29] More so if the victim knows the sexual aggressor, such as in this case, wherein appellant happens to be the father of the victim. Judelyn's testimony, the medical certificate, and the testimonies of Dr. Reyes and Fuentes support the conclusion that appellant raped Judelyn.

In evaluating the correctness of the imposition of the death penalty for the rape that occurred on August 15, 1996, the relevant law to consider is Republic Act No. 7659[30] which took effect on December 31, 1993. The pertinent provision of RA No. 7659 states that:

“Section 11. 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 minority of the victim and her relationship to the offender are special qualifying circumstances that elevate the penalty to death. To be properly appreciated, these twin circumstances must be both alleged in the Information and proven with certainty.[31]

In this case, the victim's age and her relationship with appellant have been properly recited in the indictment and proven during trial. The Information clearly stated that appellant had carnal knowledge of his daughter, Judelyn Abaño, six years old.[32] Judelyn testified as to her age and relationship with appellant.[33] Appellant himself admitted in court that Judelyn is his daughter[34] and confirmed that she was six years old.[35] On direct examination, appellant testified:

“Q - Do you know a person by the name of Judelyn Abaño?

A - Yes, sir.

Q - How are you related to her?

A - She is my daughter.”[36]

As to Judelyn's age, appellant declared:

“Q - Do you know the age of your daughter Judelyn?

A - She is six (6) years old.”[37]

There is no more need to present the live birth certificate of Judelyn or other equally acceptable official document concerning her date of birth to determine Judelyn's age. Such independent proof can be dispensed with in cases where the court can take judicial notice of the victim's tender age in view of the manifest minority of the victim.[38] Judicial notice of the victim's age may be taken when the victim is 10 years old or below.[39] With the concurrence of the special qualifying circumstances of the victim's minority and her relationship with appellant, the rape committed by appellant is qualified as heinous. The imposition of the death penalty is thus warranted.

On the civil liability, we note that the trial court ordered appellant to pay the victim the amount of P50,000.00 as indemnity and P50,000.00 as moral damages. We affirm the award of moral damages in that amount, but the civil indemnity should be increased to P75,000.00. As correctly pointed out by the Office of the Solicitor General, the award of indemnity in the amount of P75,000.00 in the present case is consistent with prevailing jurisprudence.

The current rule is if in the crime of rape, the death penalty is imposed, the indemnity ex delicto for the victim should be in the amount of P75,000.00.[40] It is when the death penalty is not decreed by the court that the victim would instead be entitled to P50,000.00.[41]

Four members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional.[42] Nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty should be imposed in this case.

WHEREFORE, the decision of the Regional Trial Court, Palawan, Branch 52, Puerto Princesa City, in Criminal Case No. 13353, finding appellant Doroteo Abaño guilty beyond reasonable doubt of rape and sentencing him to suffer the death penalty is hereby **AFFIRMED**, with the **MODIFICATION** that appellant be ordered to pay P75,000.00 as civil indemnity and P50,000.00 as moral damages.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon the finality of this decision, let certified true copies of the records of this case be 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., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Penned by Judge Fernando R. Gomez, Jr.

[2] Rollo, p. 6.

[3] Records of Criminal Case No. 13353, p. 15.

[4] Rollo, pp. 60-61.

[5] Ibid., p. 20.

[6] Ibid., p. 34.

[7] Ibid., p. 36, citing *People vs. Subido*, 253 SCRA 196 (1996).

[8] *People vs. Sagun*, 303 SCRA 382 (1999).

[9] Ibid.

[10] TSN, November 11, 1997, pp. 8-13.

[11] *People vs. Mengote*, 305 SCRA 380 (1999).

[12] Ibid.

[13] TSN, April 28, 1998, p. 15.

[14] Ibid.

[15] Ibid.

[16] *People vs. Garigadi*, 317 SCRA 399 (1999).

[17] TSN, September 15, 1998, p. 19.

[18] Ibid., pp. 18-19.

[19] This was the law in force at the time the rape was committed. RA No. 7659 was amended on October 22, 1997 by RA No. 8353 (Anti-Rape Law of 1997).

[20] *People vs. Baygar*, 318 SCRA 358 (1999).

[21] Records of Criminal Case No. 13353, Exhibit "C", p. 43.

[22] TSN, December 16, 1997, p. 5.

[23] TSN, April 28, 1998, p. 18.

[24] Ibid., p. 19.

[25] Ibid.

[26] Ibid., p. 20.

[27] *People vs. Martinez*, 325 SCRA 601 (2000).

[28] *People vs. Sagun*, *supra*.

[29] *People vs. Oliver*, 303 SCRA 72 (1999).

[30] RA No. 7659 was amended by RA No. 8353 on October 22, 1997.

[31] *People vs. Calayca*, 301 SCRA 192 (1999).

[32] Rollo, p. 6.

[33] TSN, November 11, 1997, pp. 3-4.

[34] TSN, September 15, 1998, p. 3.

[35] Ibid., p. 8.

[36] Ibid., p. 3.

[37] Ibid., p. 8.

[38] *People vs. Jacob*, G.R. Nos. 138576-77, July 13, 2001.

[39] *People vs. Rivera*, G.R. No. 139180, July 31, 2001.

[40] *People vs. Poñado*, 311 SCRA 529 (1999), p. 546.

[41] Ibid.

[42] *People vs. Echegaray*, 267 SCRA 682 (1997).

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