

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOHN NEQUIA, APPELLANT.

G.R. No. 146569. October 06, 2003

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PER CURIAM:

This is an automatic review of the Decision[1] of the Regional Trial Court (RTC) of Iloilo City, Branch 23, convicting the appellant of qualified rape, sentencing him to death by lethal injection and directing him to pay the victim AAA, civil indemnity and moral damages.

The Antecedents

On May 10, 1999, an information was filed with the RTC, charging John Nequia with rape. The accusatory portion of the Information reads:

That on or about January 23, 1999, in the Municipality of xxxxxx, Province of xxxxxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with grave abuse of confidence, he, being the stepfather of the victim, with lewd design and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge of one AAA, a 13 year-old minor, against her will and/or consent.

CONTRARY TO LAW.[2]

The accused, assisted by counsel, was arraigned on June 21, 1999 and entered a plea of not guilty.

The Case for the Prosecution

During their coverture, xxxxxxxxxxxx and her live-in partner xxxxxxxxxxxx had three children, AAA, xxxxx and xxxxxxxxxxxx. AAA, the eldest, was born on February 2, 1986. xxxxxxxxxxxx eked out a living as a franchise dealer of Avon products.

xxxxxxxxx and xxxxxxxxxxxx eventually separated. In March 1995, xxxxxxxxxxxx and the accused lived as husband and wife in xxxxxxxxxxxx. The children stayed with them. xxxxxxxx and the accused were later married on December 5, 1997.

On December 31, 1995, xxxxxxxxxxxx was in their house cooking. The accused insinuated that he wanted to have sex with her. xxxxxxxxxxxx told her husband not to bother her because she was busy cooking. The accused went up to the second floor of their house. When the accused came down, he kissed . She upbraided her husband and told him: "Ga, your mouth is smelling vagina." He told her that he would just wash his mouth. After doing so, the accused went to the camalig. For her part, xxxxxxxx went up to the second floor of their house and saw her daughter xxxxxxxxxxxx, who was then about eight years old, lying on the floor covered with a blanket. When xxxxxxxxxxxx pulled the blanket away, she noticed that her daughter's panties were inverted. Suspecting that the accused had sexually abused her daughter, xxxxxxxx proceeded to the camalig and confronted him. She demanded to know what he did to xxxxxxxx. The accused kept silent. xxxxxxxx then told the accused that she would send her daughter to live with her parents and sisters in Barangay xxxxxxxxxxxx in xxxxxxxx. The accused got angry.

xxxxxxx then pleaded to him: "If you will not admit [it], please don't repeat it again [sic]." xxxxxxxxxxxx told xxxxxxxxxxxx to be on guard henceforth. xxxxxxxxxxxx did not report the incident to the police authorities hoping that the accused would not abuse her daughter again. As a precautionary measure, xxxxxxx brought her daughters AAA and xxxxxx to her parents' house at the end of the school year, and asked them if her daughters could stay there for a while. Her parents agreed. However, xxxxxxxxxxxx, who was then about five years old, stayed with his mother and the accused in Pakiad.

At 7:00 a.m. of January 23, 1999, a Saturday, xxxxxx left their house to collect her customers' accounts. The accused, his mother Linda and xxxxxxxxxxxx were left in the house. At about 9:00 a.m., AAA, who by then was twelve years old, arrived at the house and asked the accused to make a flower vase for her as a school project. The accused agreed. By noontime, he had not yet finished his stepdaughter's project. After lunch, he ordered AAA and xxxxxxxxxxxx to go up to the second floor to sleep. The two children did as they were told. AAA and xxxxxxxxxxxx lay down on the floor face up beside each other. AAA could not sleep and merely closed her eyes, while her brother slept soundly.

Momentarily, the accused went up to the second floor, forcibly held AAA's hands and placed them behind her back. The accused hit her buttocks with his hand and placed a pillow on her face to prevent her from shouting or making any noise. AAA found it hard to breathe. She wanted to shout, but she could not. The accused then removed her clothes and panties, licked her vagina with his tongue and inserted his fourth finger. He then mounted AAA and inserted his penis into her vagina. AAA felt excruciating pain. After the accused was satiated, he dismounted from AAA and removed the pillow from her face. The pain AAA felt in her vagina made her cry out loud. Alarmed, the accused hastily put his clothes on and dressed up AAA as well. In his hurry, he forgot to put on AAA's panties. The accused then hurriedly went down to the ground floor. Lola Linda went up and inquired what the accused had done to her, but AAA could only cry. AAA then put on her panties and woke up her brother. The two left the house and went to their maternal grandparents' house at Pulo Maestra Vita. AAA did not tell her grandparents Lola Etring and Lolo Emil, and her aunts Aya and Bingbing what the accused had done to her. She was afraid that if she did, the accused might harm her and her family.

At about 6:00 p.m. of the same day, the accused fetched xxxxxx at Barangay Cagbang and brought her home. In the days that followed, xxxxxxxxxxxx noticed that the accused was not his usual self. He seemed absent-minded. She asked her sister-in-law Milagrosa Senarlo, what caused the unusual behavior of her husband. Milagrosa replied that she did not know, but suggested that xxxxxxxxxxxx talk to her daughter AAA.

On January 26, 1999, xxxxxxxxxxxx went to the Pakiad Elementary School where AAA was studying. She wanted to talk to her daughter. She was unable to do so, however, because AAA was taking her tests at the time.

January 27, 1999 was xxxxxxxxxxxx's birthday. She returned to the school and talked with AAA in the school canteen. When xxxxxx asked her daughter what happened to her on January 23, 1999, AAA replied that nothing happened. However, xxxxxxxxxxxx noticed that AAA was kicking her feet on the ground and that she had started crying. AAA then admitted that something indeed happened to her. xxxxxxx urged her daughter to reveal the incident and to consider the information as AAA's birthday gift to her. Touched by her mother's request, AAA finally told her mother that she was raped by the accused shortly after lunch on January 23, 1999. She told her mother how the accused sexually abused her. xxxxxxx was shocked by her daughter's revelation. xxxxxxxxxxxx did not confront the accused because she was sure that he would not admit to any wrongdoing.

Nevertheless, xxxxxx accompanied AAA to the Western Visayas Medical Center in Iloilo City on February 12, 1999. Dr. Encarnacion A. Rubinos examined AAA and later signed a medico-legal certificate containing the following findings:

INTERNAL EXAMINATION FINDINGS:
COMPLETE HYMENAL TEAR, OLD, HEALED AT
5:00 and 7:00 o'clock POSITIONS.

LABORATORY FINDINGS: NO SPERMATOZOA SEEN

IMPRESSION: COMPLETE HYMENAL TEAR, OLD,
HEALED AT 5:00 & 7:00 O'CLOCK POSITIONS.[3]

On February 4, 1999, xxxxxxx and Municipal Social Worker Raquel Baldovese accompanied AAA to the xxxxxx Police Station where they reported the incident, as well as the December 31, 1995 occurrence when the accused had also apparently sexually abused the younger xxxxxxxxxxxx.[4] On February 15, 1999, Chief of Police Antonio B. Bersamin filed a criminal complaint for rape against the accused with the Municipal Trial Judge of xxxxxxx. Appended to the complaint was the affidavit executed by AAA.

The Evidence of the Accused

The accused denied the charge. He claimed that xxxxxxxxxxx instigated the charge against him because she wanted to leave him but he prevented her from doing so. He testified that he was heavily indebted and that in 1998, xxxxxxx was asked to pay his debts. At 6:30 a.m. on January 23, 1999, he accompanied his wife xxxxxx to Barangay xxxxxxxxxxx. He returned to the house and saw AAA who asked him to apply shellac on her bamboo project. He told AAA that he had no shellac but that his brother-in-law Roger Planta, xxxxxxx's brother, had some. After a short time, the accused left to pass by Roger's house and to fetch xxxxxxx. On the way, he also passed by the house of a friend, Nestor Espada, at Barangay Abilang Sur. Fifteen minutes later, he arrived at Roger's place. The accused asked Roger if he had shellac and the latter replied that he had already used them up. Roger then invited the accused to a drinking spree. The accused agreed. They were joined by Torpo, and later by Joseph. The drinking spree ended at around 2:30 p.m. Thereafter, the accused proceeded to Barangay Cagbang where he fetched xxxxxxx. The couple arrived home at 6:30 p.m. By then, AAA had already left the house with her brother.

Milagrosa Senarlo, the sister of the accused, testified that she lived about ten meters away from her brother's house. xxxxxxxxxxx's relationship with her brother turned sour when xxxxxxxxxxx started arriving home late. The accused became "absent-minded" because he and xxxxxxx were heavily indebted. xxxxxxx had been to Hongkong in 1998 and spent so much money for her trip. They also gambled at Pakiad.

The witness also testified that in the early morning of January 23, 1999, the accused and xxxxxx left their house and went to Barangay Cagbang. The accused returned at 9:00 a.m. AAA, who was wearing pants and a blouse, arrived at the house with her school project. The accused then left. His mother Linda told AAA to leave her project in the house. As it was getting late, Linda accompanied AAA and xxxxxxxxxxx to the nearby store. From there, AAA and xxxxxxxxxxx left for Pulo Maestra Vita by themselves. According to the witness, AAA and xxxxxx were even playing together on their way to the store.

The next day, January 24, 1999, the accused and xxxxxxxxxxxwent to the city to see a movie. AAA brought her brother xxxxxxxxxxx back to the house of the accused at 4:30 p.m. in a tricycle.

After due proceedings, the trial court rendered judgment convicting the accused of qualified rape and sentencing him to death. The decretal portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of the crime of Rape defined and penalized under Arts. 266-A and 266-B of Republic Act 8353 hereby sentencing the accused John P. Nequia to the supreme penalty of DEATH by lethal injection, further condemning the said

accused to pay the victim AAA the sum of P75,000.00 by way of civil liability and the amount of P75,000.00 moral damages.

The Warden, Iloilo Rehabilitation Center, Iloilo City where the accused is detained is ordered to immediately remit said accused to the National Penitentiary. Let the entire records of this case be elevated to the Honorable Supreme Court, Manila for automatic review.

SO ORDERED.[5]

The appellant assails the decision of the trial court, raising the lone assignment of error that -

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF CONSUMMATED RAPE DESPITE UNCERTAINTY OF ITS COMMISSION.[6]

The appellant asserts that, as can be gleaned from AAA's affidavit and the complaint filed with the MTC, the appellant did not insert his penis into AAA's vagina. AAA admitted when she testified that she did not see the penis of the appellant. She admitted that she was lying beside her brother xxxxxxxx when the appellant raped her, and was forced to close her eyes when the appellant had sex with her.

The appellant contends that although the prosecution proved that he inserted his fourth finger into the private complainant's vagina, such act does not constitute rape (sexual assault) under the Anti-Rape Law.[7] He argues that the insertion of a human finger into the victim's vagina has been excluded in Senate Bill No. 950 and House Bill No. 6265. He also cited Memorandum Circular No. 22, dated September 28, 2000 of the then Secretary of Justice Artemio Tuquero. Furthermore, there is no evidence that the appellant threatened the victim with physical harm. The prosecution thus failed to prove with certainty that the appellant raped AAA.

According to the appellant, the victim and her mother xxxxxxxx were even smiling and were in a happy mood during the trial. Despite xxxxxxxx's knowledge that the appellant had abused her daughter, she never confronted him. xxxxxxxxxxxx even admitted that despite her knowledge that the appellant had raped her daughter, she still agreed to have sex with the appellant, and prodded the latter to have more sex although he had already ejaculated.

The contention of the appellant does not hold water. AAA testified that the appellant licked her vagina with his tongue, inserted his fourth finger, then his penis into her vagina, although she did not know how deep the penetration was. She felt pain in her vagina as the appellant penetrated her:

Q

At around 12:30 o'clock [sic] at noon, can you tell this Honorable Court what were you doing at that time inside the house of your stepfather?

A

He told us to go to sleep.

Q

You said "us", who was your companion at that time?

A

My younger brother.

Q

Your younger brother xxxxxx?

A

Yes, sir.

Q

When your stepfather told you to sleep, did you sleep?

A

I slept on the upper portion.

Q

You mean the house of your stepfather and mother has a [sic] 2 storey?

A

Yes, sir.

Q

That place, the upper part of the house where you were told by your stepfather to sleep, how many rooms are there?

A

One.

Q

And where did you and your brother sleep that noon of January 23, 1999 because you were told to sleep?

A

At the upper portion.

Q

On the bed?

A

No, sir.

Q

Where?

A

On the floor.

Q

There is no bed on the upper part of the house of your stepfather?

A

No, sir.

Q

By the way, were you able to sleep that afternoon of January 23, 1999?

A

I was not able to sleep, I only closed my eyes.

Q

When you said you only closed your eyes, and [were] not able to sleep, can you tell this Honorable Court what happened?

A

My stepfather went upstairs and held my [sic] both hands and placed it [sic] on my back.

COURT:

Q

About what time is this, more or less?

A

I can not recall.

Q

Have you already taken your lunch when you went to sleep?

A

Yes, sir.

COURT:

Proceed.

FISCAL:

Q

When you said your stepfather came and held your 2 hands and put them at your back, what was your position at that time?

A

I was facing upwards.

Q

Can you demonstrate what was your position at that time?

A

Yes, sir. (Witness demonstrating by sitting and placing both hands on the back).

Q

After your stepfather held your both hands and put [them] on [sic] your back, what did he do after that?

A

He covered my eyes and mouth with a pillow.

Q

After he covered your eyes and mouth with a pillow, what did he do?

A

He slapped my buttocks so that I will not shout.

Q

And after that?

A

Then he took off my pants and panty.

Q

What were you wearing at that time?

A

Pants.

Q

What kind of pants was that?

A

Maong.

COURT:

Q

Is that a long or short pants?

A

Long.

Q

And after he took off your long pants and panty, what did he do?

A

He placed a pillow under my buttocks.

Q

And what did he do after that?

A

He lipped [sic] my vagina and fingered my vagina.

Q

What did you do at that time when your stepfather lipped and fingered your vagina?

A

I can not move at that time.

Q

And after he lipped and fingered your vagina, what did he do?

A

He laid on top of me and inserted his penis [in]to my vagina.

Q

And after he inserted his penis into your vagina what happened?

A

Because of pain I shouted.

Q

And when you shouted because of pain, what happened?

A

He removed his penis in my vagina.

Q

And what happened next?

A

And my grandmother inquired from him what happened to Candy and he replied, "Nothing, he just quarreled with her brother."

Q

Where was your grandmother?

A

Downstairs.

Q

What was she doing at that time?

A

She finished already [sic] weeding.

COURT:

Q

You said that when you shouted because of pain, the accused withdrew or removed his penis from your vagina, correct?

A

Yes, sir.

Q

Why, was his penis able to enter the opening of your vagina?

A

Yes, sir.

Q

Was it able to penetrate your vagina?

A

It was not fully inserted.

Q

Was the tip of his penis able to touch the opening of your vagina?

A

Yes, sir.

Q

Was it able to penetrate the portion of your vagina?

A

Yes, sir.

Q

About how many inches was the penetration, if any?

A

I do not know.[8]

...

COURT

Q

You are sure that John Nequia, the accused inserted his penis into your vagina?

A

Yes, Your Honor, because I felt pain when he inserted his penis.

Q

Was his penis able to penetrate into your vagina?

A

I cannot ascertain but I only felt pain.

Q

You cannot determine how deep was the penetration of his penis into your vagina?

A

No, Your Honor.

Q

Did you experience whether your vagina bled?

A

No, Your Honor.

Q

Did it bleed or it did not bleed?

A

I do not know because I was not able to see.[9]

Although AAA testified that she did not see the penis of the appellant because of the pillow on her face, she was sure that the appellant inserted his penis because it was bigger than his finger:

ATTY. DEGUMA

Q

Madam Witness, since you said your eyes were covered, how do you know that it was the penis of John Nequia that [was] inserted into your vagina?

A

Because of that fact that I felt as if it is his finger because his finger is smaller than his penis.

COURT

Q

Which is bigger, his penis or his finger?

A

His penis, Your Honor.[10]

The trial court correctly convicted the appellant of consummated rape under Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353, the Anti-Rape Law.

In *People v. Salinas*,^[11] we held that in rape cases, there are no half measures or even quarter measures, nor is their gravity graduated by the inches of entry. Partial penile penetration is as serious as full penetration. In either case, rape is deemed consummated. We further said that in a manner of speaking, "bombardment of the drawbridge is invasion enough even if the troops do not succeed in entering the castle."^[12]

In *People v. Campuhan*,^[13] we held that rape is consummated by the slightest penetration of the female organ,

i.e., touching of either labia of the pudendum by the penis:

...As the labias, which are required to be "touched" by the penis, are by their natural situs or location beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape.

The pudendum or vulva is the collective term for the female genital organs that are visible in the perineal area, e.g., mons pubis, labia majora, labia minora, the hymen, the clitoris, the vaginal orifice, etc. The mons pubis is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the labia majora or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the labia majora is the labia minora. ...

Mere contact by the male's sex organ of the female's sex organ consummates rape.[14]

Threats of physical harm on the victim is not an indispensable element in the crime of rape. For rape to be consummated, it is enough that the victim is intimidated or forced into submitting to the bestial lust of the accused. In *People v. Sagun*,^[15] we held that intimidation is addressed to the mind of the victim. It is subjective and its presence cannot be tested by any hard-and-fast rule but must be viewed in the light of the perception and judgment of the victim during the commission of the crime.^[16] The age, size and strength of the parties should be taken into account in evaluating the existence of the element of force or intimidation in the crime of rape.^[17] Though the accused lays no hand on the victim, yet if by any way of physical forces, he so overpowers her mind that she does not resist, or ceases resistance through fear of greater harm, rape is deemed consummated. Physical resistance need not be proven in rape when intimidation is exercised upon the victim and the latter is impelled to submit herself to the bestial desire of the accused.^[18]

In this case, the appellant was 28 years old and heavy in built. He overpowered the victim by holding both her hands and placing them at her back. The appellant even slapped her buttocks and put a pillow over her face to prevent her from shouting for help. The victim could hardly breathe as the appellant ravished her. She felt pain in her vagina when the appellant penetrated her.

The Court, however, does not agree with the appellant's submission that he did not commit rape (sexual assault), as defined and penalized in Article 266-A, paragraph 2 of the Revised Penal Code, as amended by Republic Act 8353, when he inserted his fourth finger into AAA's vagina. The aforesaid law reads:

Article 266-A. Rape; When and How Committed. - Rape is committed:. . .

2) By any person who, under any of the circumstances mentioned in paragraph I hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

In *People v. Perez*,^[19] the word "instrument or object" was construed to include a human finger. The Court reiterated its ruling in *People v. Soriano*^[20] and *People v. Bun*.^[21] The Anti-Rape Law transformed and reclassified rape as a felony against persons, under Title Eight, Chapter Two, Book II of the same Code.^[22] The criminalization of the penetration of a person's sex organ or anal orifice and the insertion of a person's penis into the mouth or anal orifice of another, whether man or woman, and the classification thereof as rape (sexual assault) were designed to prevent not only the physical injuries inflicted on the victim but also his subjection to personal indignity and degradation and affront to the psychological integrity associated with an unwanted violation.^[23] An unconsented intrusion by whatever object or instrumentality chosen by the perpetrator, whether animate or

inanimate, is prohibited by the law.[24] The fact that only digital penetration occurred did not lessen the victim's fear and humiliation or the violation of her bodily integrity.[25] The public prosecutor should thus have filed two separate Informations against the appellant, one for rape under Article 266-A, paragraph 1 for the insertion by him of his penis into the vagina of the victim, and rape (sexual assault) under Article 266-A, paragraph 2 of the law for inserting his finger into the victim's vagina. However, only one information was filed against the appellant, for rape under Article 266-A, paragraph 1 of the Code. The appellant cannot thus be convicted of rape (sexual assault) under Article 266-A, paragraph 2, since he was not charged with the said crime.

There is no discordance between AAA's affidavit, which was appended to the criminal complaint for rape, and her testimony. In her affidavit, AAA stated that the appellant had intercourse with her:

That after a few minutes, my stepfather John Nequia came and he hold [sic] my hands, covered my mouth with a pillow and slapped my hip in order not to shout and he immediately took off my underwear, he put pillow my [sic] hips, kissed, sucked and finger [sic] my vagina and have intercourse with me but did not consum[m]ate because [sic] I shouted for [sic] the pain of my vagina.[26]

The credibility of AAA and the probative weight of her testimony are not impaired by the deficiency in the accusatory portion of the criminal complaint filed by xxxxxxxx Chief of Police Bersamin, nor the latter's failure to testify for the prosecution, or the fact that AAA did not sign the criminal complaint. Besides, the criminal complaint was never adduced in evidence by the prosecution.

There is no evidence on record that AAA and xxxxxxxxxxxx were always smiling and in a happy mood during the trial. On the contrary, the records show that when AAA testified, she cried:

REDIRECT EXAMINATION

BY PROSECUTOR CABALUM

Q.

Madam Witness, how were you able to shout when you said before that the pillow was covering your mouth and your eyes?

A.

I was able to shout when he was no longer lying on top of me.

Q.

And you were able to remove the pillow covering your eyes and mouth?

A.

Yes, Ma'[a]m.

Q.

Madam Witness, why did you not tell your Lola Linda whom you first met after the incident?

A.

I have not told anybody about it. I just continued to lie and I was afraid at the time.

COURT:

Q.

Why are you afraid?

A.

I was just afraid, Your Honor.

Q.

You are afraid of whom?

A.

John Nequia.

Q.

Why are you afraid of John Nequia?

A.

Because if I will reveal he might kill us.

ATTY. DEGUMA

Your Honor, I move to strike out the statement "basi pamatyon ko sila". It is a presumption, Your Honor.

COURT

Q.

Why, are you afraid that John Nequia will kill your parents if you will report the incident to them?

A.

Because I love them, Your Honor.

Q.

But John Nequia warned you not to report to your parents?

A.

No, Your Honor, because my grandmother immediately went up.

Q.

What I mean, John Nequia did not tell you not to report what he did to you to your parents?

A.

No, Your Honor.

COURT

Proceed.

PROSECUTOR:

I would like to put on record that the victim is crying.

COURT

Noted already.

PROSECUTOR

That will be enough.[27]

The testimony of AAA is not impaired by the evidence that the appellant raped her while xxxxxxxxxxxx was sleeping beside her. Rape can be committed in the same room where other members of the family are also sleeping.[28]

The appellant's attack on xxxxxxxxxxxx's credibility as a witness and the veracity of her testimony is futile. xxxxxxxxxxxx's account of the events is merely corroborative of AAA's testimony. Case law has it that it is perfectly acceptable to anchor a judgment of conviction for rape based solely on the uncorroborated testimony of the victim when the testimony per se is credible, natural, convincing and free from serious contradiction, and her sincerity and candor, free from suspicion.[29] In this case, the trial court found the testimony of AAA spontaneous, sincere and entitled to full probative weight:

Whereas, complainant AAA declared that she was raped by her stepfather and herein accused John Nequia, the said accused, relying on simple denial and alibi and further attributing ill-motive on the part of xxxxxxxxxxxx, strongly denies having raped complainant AAA. That complainant AAA was only 13 years old then and a 6th grade student of Pakiad Elem. School in Brgy. xxxxxxxxxxxx is given. She was not shown to have the shrewdness and callousness of a woman who would concoct such a story and endure physical examination and public trial if her story were untrue. In *People vs. Victor*, the Court held that when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed (*People vs. Alejandro Devilleres*, G.R. No. 114138, March 14, 1997). That the herein accused John Nequia was married to her natural mother xxxxxxxxxxxx on December 5, 1997 (Exh. "B", p. 134, rec.) hence, said accused John Nequia is her stepfather, is also given. If we go by the testimony of complainant AAA vis a vis the denial by the accused John Nequia, it would not be difficult for the Court to readily give credence to the testimony of AAA which the Court finds replete with spontaneity and so overwhelming as to be impervious as to the mere denial of the accused. It is a well-settled rule that an affirmative testimony is far stronger than a negative testimony especially so when it comes from the mouth of a credible witness. (*People vs. Ramirez*, G.R. No. 97020, Jan. 20, 1997).[30]

After an incisive consideration of the evidence on record, we find no reason to deviate from the findings of the trial court and its calibration of the testimony of AAA. In *People v. Castillo*,[31] we held that in rape cases where the offended parties are young and immature girls from the ages of twelve to sixteen, there is considerable receptivity on the part of this Court to lend credence to their testimonies, considering not only their relative vulnerability but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to.[32] There is no showing that AAA was impelled by any ill-motive in charging her stepfather with a heinous crime. Hence, her testimony is entitled to full faith and credence. No woman, much less a child, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars.[33] All told then, this Court is convinced of the guilt of the appellant for qualified rape, and that the trial court correctly imposed the penalty of death in this case.

The Proper Penalty for the Crime

The trial court correctly sentenced the appellant to suffer the death penalty. As alleged in the Information, the victim was under 18 years old when she was raped by her stepfather, the appellant. The victim's minority and her relationship with the appellant are circumstances which require the imposition of the death penalty under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which reads:

...

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.

The Civil Liabilities of the Appellant

The trial court awarded P75,000 to the victim AAA as civil indemnity, and P75,000 as moral damages. It did not award exemplary damages. Conformably to case law, the victim in rape cases is entitled to P75,000 as civil indemnity, and P75,000 as moral damages when the death penalty is imposed by the Court. She is also entitled to exemplary damages in the amount of P25,000 as a vindication of the undue sufferings and wanton invasion of her rights, and to punish the appellant for his outrageous conduct.[34]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Iloilo City, Branch 23, is AFFIRMED with MODIFICATION, in that appellant John Nequia is ordered to pay the victim AAA P75,000 as civil indemnity, P75,000 as moral damages, and P25,000 as exemplary damages.

Three Justices of the Court maintain their position that Republic Act No. 7659 is unconstitutional insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority that the law is constitutional, and that the death penalty can be lawfully imposed in the case at bar.

In accordance with Section 25 of Rep. Act No. 7659, amending Section 83 of the Revised Penal Code, let the records of this case be forthwith forwarded, upon finality of this Decision, to the Office of the President for possible exercise of the pardoning power. Costs against the appellant.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Corona, J., on leave.

[1] Penned by Judge Tito G. Gustilo.

[2] Records, p. 1.

[3] Exhibit "C," Folder of Exhibits, p. 3.

[4] Exhibit "E," Id. at 5.

[5] Records, p. 239.

[6] Rollo, p. 56.

[7] Republic Act No. 8353.

[8] TSN, 8 November 1999, pp. 6-10.

[9] TSN, 15 November 1999, pp. 23-24.

[10] Id at 24-25.

[11] 232 SCRA 274 (1994).

[12] Id. at 279.

[13] 329 SCRA 270 (2000).

[14] People v. Castillo, 335 SCRA 100 (2000).

[15] 303 SCRA 382 (1999).

[16] Id. at 394.

[17] People v. Cambi, 333 SCRA 305 (2000).

[18] People v. Sagun, supra.

[19] G.R. Nos. 141647-51, March 6, 2002.

[20] G.R. Nos. 142779-95, August 29, 2002.

[21] G.R. No. 149199, January 28, 2003.

[22] Under the Spanish Penal Code, rape is classified as a crime against honesty (delito contra la honestidad) which is equivalent to moralidad sexual (Cuello Calon, Derecho Penal, Vol. II, p. 505).

[23] Harwood v. State, 555 NE Rep. 2d. 513 (1990).

[24] Steward v. State, 555 NE Rep. 2d. 121 (1990).

[25] State v. Jacques, 536 A2d 535 (RI. 1988).

[26] Records, p. 7.

[27] TSN, 15 November 1999, pp. 29-3 1.

[28] People v. Castillo, supra.

[29] People v. Burgos, 279 SCRA 697 (1999).

[30] Rollo, pp. 81-82.

[31] Supra.

[32] Id at 112.

[33] People v. Aliviano, 335 SCRA 371 (2000).

[34] People v. Catubig, 416 Phil. 102 (2000).

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