

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAUL OBRIQUE Y ANTONIO, APPELLANT.

G.R. No. 146859. January 20, 2004

Ponente: AZCUNA, J.

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AZCUNA, J.:

Elevated to us for automatic appeal is the Decision[1] dated November 15, 2000, of the Regional Trial Court (RTC) of Malaybalay City, Bukidnon, Branch 8, in Criminal Case No. 9019-98. The death penalty was imposed on Raul Obrique y Antonio (hereafter “appellant”) for the crime of rape committed upon his 13-year old niece, private complainant Angela H. Obrique.

The original indictment, dated July 2, 1998, reads:

That on or about the 2[nd] day of March, 1998, in the evening, and prior thereto, at Purok 1, Barangay Managok, Malaybalay City (Bukidnon), Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and with the use of a bolo, did then and there wil[l]fully, unlawfully and criminally have sexual intercourse with his niece, ANGELA H. OBRIQUE, a girl 13 years of age, against her will.

CONTRARY to and in violation of Articles 335 of the Revised Penal Code, as amended by Republic Act Nos. 7659 and 8353.[2]

On August 12, 1998, before arraignment could be had on the charge, the prosecution moved to amend the above information.[3] Consequently, an Amended Information was filed on August 17, 1998, worded as follows:

That on or about the 2[nd] day of March, 1998, in the evening, and prior thereto, at Purok 1, Barangay Managok, Malaybalay City, Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, with force and intimidation and with the use of a bolo, did then and there willfully, unlawfully and criminally pull and drag to a grassy and secluded place AND have sexual intercourse with his niece, ANGELA H. OBRIQUE, a girl 13 years of age, against her will.

Contrary to and in violation of Articles 335 in relation to 15 of the Revised Penal Code, as amended by Republic Act Nos. 7659 and 8353.[4]

On November 3, 1998, upon arraignment thereunder, appellant, assisted by his counsel, pleaded not guilty.[5]

The pre-trial conference was thereafter held and the parties came out with a Pre-Trial Agreement[6] which was signed by the prosecutor, the counsel for appellant, as well as appellant himself.[7] The agreement embodied these pertinent stipulations:

- Private complainant Angela Obrique in Criminal Case No. 9018-98 for the crime of rape, is the niece of the accused, being a daughter of the elder brother of the accused;
- The private complainant Angela Obrique was born on June 19, 1984, as evidence[d] by Certificate of Live Birth, marked as Exhibit “A;”

- That private complainant Angela Obrique was examined by Dr. Joselyn M. Baeyens of the Bukidnon Provincial Hospital of Malaybalay who issued a Medical Certificate dated March 3, 1998, marked as Exhibit “B;”

x x x

The same stipulations appear in the Pre-Trial Order[8] issued by RTC Judge Vivencio P. Estrada, dated November 10, 1998.

Trial on the merits followed.

Two witnesses were presented by the prosecution. ENECITA OBRIQUE, the mother of complainant, first took the stand, followed by ANGELA OBRIQUE (hereafter “Angela”). Their testimonies brought forth the following narration of facts:

The spouses Norberto and Enecita Obrique had 12 children, the youngest of whom is complainant Angela. The couple lived with their two unmarried sons at Purok 1, Managok, Malaybalay City, Bukidnon (hereafter “Managok”). Appellant Raul Obrique is Norberto’s younger brother and was also staying with them in the same house. Appellant was already past his thirties and was still single.

Angela, on the other hand, stayed with the spouses’ married daughter named Gemma. Although their house was only 75 meters from Gemma’s house, Angela decided to stay with Gemma because she was “afraid and disturb[ed] by the trouble in our house.”[9] Enecita testified that when Angela asked permission to stay with her sister, Angela had said, “Ma, I’ll stay with Gemma because I am afraid of Uncle Raul who is fierce.”

On March 2, 1998, Enecita was in her house together with two grandchildren. Her husband and two sons were attending the wake of a relative, also in Managok but located a little distance from their house. At that time, appellant had already been staying with them for a year. He usually left the house during the day and came back at night.

At around 10:00 p.m., appellant arrived and struck the shutter of the house three times with his bolo. Enecita then opened the door and was told by appellant to fetch Angela from her elder sister. Enecita obeyed, stating that if she did not do so, appellant would hack her.[10] She immediately went to Gemma’s house and told the latter to wake her sister up so that Angela can go home.

While Angela was walking with Enecita towards their house, they saw appellant on the road. Appellant was about to strike Enecita with his bolo when Angela pleaded, “Tio, do not hack Mama because I am now going home.” To this appellant replied, “[A]lright, you go home immediately but do not go inside the house, just wait for me at the yard.” Nevertheless, upon reaching the house, mother and daughter immediately went inside. Appellant followed them and finding that they were already inside, he proceeded to hack the door and demanded to know why they disobeyed his orders. He struck the door six more times and kept telling Angela to come down. Trembling with fear, Enecita and Angela felt that appellant really intended to hack them if Angela refused to obey. Thus, Angela decided to go down but only after asking her mother to come with her.

When the two of them went downstairs, appellant took Angela’s hand and ordered Enecita to go back upstairs and stay in the house. Enecita testified that appellant brought her daughter to a grassy area about 60 meters from their house. She in turn was unable to sleep and just sat down. At around 11:00 p.m., she heard her daughter’s pleas, saying “Don’t do it Tio, do not do it.” At around 1:00 a.m. of March 3, 1998, she also heard her daughter shouting “Mama, please help. Mama, please help.”[11]

Accompanied by appellant, Angela returned to the house at around 5:00 a.m. Angela sat at the kitchen table. Her

hair was crumpled and she appeared pale. Appellant was eating and was trying to convince Angela to eat as well but the latter refused. Appellant then told Enecita to go and fetch Gemma's husband, Ernesto Gutierrez. Appellant said he wanted to tell Ernesto that Angela should no longer stay at Ernesto's house.[12] Enecita did not move at first, but appellant again ordered her to get Ernesto. Just as she was about to leave, appellant changed his mind and said, "Do not go you just call him, and do it because I will be leaving at 6:00 o'clock. If you are not going to do that I might kill both of you." She obeyed him because she was afraid.[13]

Her son-in-law, Ernesto Gutierrez, later arrived and went directly to their kitchen and asked, "What is it, Nanay?" Enecita replied that appellant no longer wanted Angela to stay in Ernesto's house because Ernesto was allegedly molesting Angela. Ernesto then said, "You [are] just accusing falsely, Nanay. This Angela does not even know how to wipe [her] nose, how could I do that to her? If you doubt me you better have her examined by a doctor." [14]

While Enecita and Ernesto were talking, appellant was lying down about four meters away. Upon hearing Ernesto's reply, appellant asked, "You are not going to admit?" Immediately thereafter, appellant struck Ernesto with his bolo, despite Ernesto's protestations of innocence. Ernesto sustained five wounds on his body and two wounds on his head.[15]

Appellant ran and left Ernesto, whose body was already covered in blood. The latter was immediately brought to the hospital and Enecita was instructed to bring Angela to a doctor.[16]

Enecita further testified that she pitied her daughter very much, especially considering her physical condition. It had been stated earlier that when Angela was born, both the latter's feet were "bent towards her head" and "the knees do not have kneecaps" which was why Angela noticeably limps while walking.[17] She stated that she was not asking for any amount in recompense but only that the accused be imprisoned for the rest of his life.[18]

On cross-examination, Enecita said that the wake which her husband was attending was about four kilometers away from their house. To get to the place, one needs to ride a jeep although they sometimes walked. After she fetched Angela, they couldn't go to her husband at the wake because she also feared for the safety of her two small grandchildren who were left in the house. In turn, her husband was only able to come home when he heard about the hacking incident.

When appellant arrived at their house on March 2 and ordered her to fetch Angela, Enecita observed that appellant was not drunk although she could tell that he had taken some wine because she could smell liquor on his breath.

When appellant arrived with Angela at 5:00 a.m. of March 3, Enecita had no chance to talk privately with her daughter as appellant had immediately ordered her to call Ernesto. She also did not ask her daughter whether the alleged molestation by Ernesto was true because Enecita was already confused.

During her testimony, ANGELA corroborated the statements of her mother with regard to the occurrences prior to the rape. At the time in question, she had been living with her sister Gemma Gutierrez and her husband as they were the ones spending for her schooling.[19] At around 10:00 p.m., she was already asleep when her mother arrived. She went with her mother, and on the way to her parents' house, they saw appellant on the road, raising his hand and holding a bolo. When Angela saw appellant about to hack her mother, she immediately shouted, "Tio, do not hack Mama because anyway I am already going home." The appellant heeded her plea and she and her mother were able to reach the house. The two of them proceeded upstairs but appellant followed them and when appellant was already downstairs inside the kitchen, he struck a part of the kitchen with his bolo, demanding that the two women come down. When Angela went down with her mother, appellant instantly pulled her by the

hand and ordered her mother to go back upstairs.

In narrating her ordeal in the hands of appellant, Angela had these to say:

DIRECT Testimony

Q

And when the accused ordered your mother to go upstairs and pulled your hand, what did the accused do to you?

A

He then brought me to a grassy area.

Q

This grassy area where you were brought by the accused is how far from your house?

A

Quite far.

Q

Could you show to the Honorable Court the distance by pointing any object outside taking for granted where you are sitting to be your house outside of the courtroom?

A

(Witness is pointing to a distance of 100 meters).

Q

When the accused brought you to a grassy place which is about 100 meters from your house, what did the accused do to you?

A

He undressed me.

Q

And he removed all your dress including your underwear?

A

Yes.

Q

And when he removed your dress including your underwear, was the accused also naked or not?

A

Already undressed.

Q

And when the accused already undressed and also you were undressed, what did the accused do to you?

A

He placed himself on top of me.

Q

Were you lying on the ground at your back when this incident happened when the accused was on top of you?

A

Yes.

Q

And what did he do when he was on top of you, both of you were naked?

A

He inserted his penis inside my vagina.

Q

At about what time was that if you can recall, just estimate?

A

10:00 o'clock.

Q

Before that act of the accused inserting his penis inside your vagina that happened at about 10:00 o'clock in the evening, can you not shout?

A

I shouted for my mother, saying, "Ma help, help."

Q

When you shouted calling your mother for help, what did the accused do to you?

A

He then said, “You ke[ep] qui[et] or I might kill you.”

Q

When he said to you keep qui[et] because he is going to kill you, where was his bolo then?

A

Beside him.

Q

Now, how long was the accused on top of you w[ith] his penis inside your vagina at about 10:00 o’clock in the evening?

A

For a long time.

Q

Now, if you can remember, how many times did the accused make his penis get inside your vagina that evening of March 2, 1998 in the grassy place?

A

Three (3) times.

Q

The first one happened at about 10:00 o’clock. How about the second time, what time was that already?

A

11:00 o’clock.

Q

How about the last one, the third time?

A

12:00 o’clock.

Q

Now, when the accused raped you for three (3) times that evening, did you make any noise to be able to call

for assistance so that people can help you?

A

I shouted.

Q

What did you say when you shouted for help?

A

I said, Ma, help.”

Q

When did you shout Mother help, was this during the first incident of rape, the second or the third?

A

On the third time.

Q

Now, how long did you stay with the accused in that grassy place?

A

For a long time.[20]

x x x

ATTY. RECIÑA:

Q

How d[id] you feel [during] this incident of accused raping in the evening of March 2, 1998?

A

It was painful.

Q

What is painful on the part of your body?

A

My back.

Q

How about your vagina?

A

It was also painful.[21]

CROSS Examination

Q

Angela, in relation to this case do you remember having executed an affidavit?

A

Yes.

Q

If that affidavit will be shown to you could you be able to identify the same?

A

Yes.

Q

I am showing you an affidavit in [V]isayan, is this your affidavit?

A

Yes. (Witness referring to page 3 of the record of the case).

Q

At the time that you were brought by the accused to the grassy area and forced to lay down and then he placed himself on top of you, [did] the accused choke your neck?

A

Yes.

Q

He pressed your neck very hard?

A

Yes.

Q

Also, aside from choking your neck, the accused struck your head with the bolo, is that correct?

A

Yes.

Q

What part of your head was hit by that bolo?

A

(Witness touching the right side of her head).

Q

It was a hard blow?

A

Yes.

Q

When you were examined by the doctor on March 3, 1998, did the doctor examine[] the part of your head that was hit by the bolo?

A

No.

Q

How about your neck when it was choke[d] very hard by the accused, did the doctor examine[] also this part?

A

No.

Q

According to your testimony you were raped by the accused three (3) times, 10:00, 11:00 and 12:00 o'clock, is that correct?

A

Yes.

Q

And after you were raped the last time of 12:00 o'clock in the evening both of you were already asleep?

A

No.

COURT: (to witness)

Q

What were you or Raul doing between 12:00 and 5:00 o'clock in the morning?

A

We dress ourselves.

Q

Yes, but that was about five (5) hours, what happened there, if any?

A

He let me sat down.

Continue.

ATTY. MONSANTO:

Q

The accused and you are both sitting down at the grassy area?

A

Yes.

Q

Did you talk or converse with each other?

A

No.

Q

So you just sat there from 12:00 [] midnight of March 2, 1998 up to 5:00 o'clock in the morning of March 3, 1998, is that correct?

A

Yes.

Q

This alleged incident of rape committed by the accused to your person on March 2, 1998, was the only time that this happened to you?

A

Yes.

x x x

Q

When your affidavit was taken it was taken before the police at Malaybalay?

A

Yes.

Q

And there were questions being asked to you when this affidavit was being executed?

A

Yes.

Q

And do you remember having been asked [] this question, "Isulti dinhi an[] nahitabo niadtong gabi-i sa petsa 2 sa Marso 1998?" [Do] you remember having been asked [] that question?

A

Yes.

Q

And that question was reflected in your affidavit in paragraph 9, do you remember that?

A

Yes.

Q

And on that question you gave an answer, is that correct?

A

Yes.

Q

And your answer as indicated in your affidavit was this way in [V]isayan dialect, “Sa alas 10:00 sa gabi-i niadtong petsaha, diha na si Yoyo Raul, ug iya na usab ako nga gilugos, gani iya pa akong gibunalan sa iyang sundang ug gitu-ok, mao kadto nga na rape gayud ako gani gikan sa alas 10:00 sa gabi-i wala akoy tulog hangtud sa kaadlawon sigi lang siya ug utro-otro sa pagrape kanako, gani nagkurog-kurog na ako kay sakit na kaayo ang akong bisong pero giantos ako kay hadlok man ako nga iyang patyon kaming tanan, kay isog man kini kayo si Yoyo Raul.” Which in (E)nglish means, “At 10:00 o’ clock in the evening of that date, Yoyo Raul was around and he again raped me. In fact, he beat me with his bolo and also choke[d] me, and so he was able to rape me from 10:00 o’clock that evening, and I was unable to sleep until dawn wherein he repeatedly raped me. In fact, I was trembling already because my vagina was already very painful, but I only bear it because I was afraid that he will kill all of us because this Yoyo Raul is very fierce”. Do you remember having made that answer?

A

Yes.

Q

Will you please explain to us, Angela, your answer which says that, “Gikan sa alas 10:00 sa gabi-i wala akoy tulog hangtud sa kaadlawon sigi lang siya ug utro-otro sa pagrape kanako, gani nagkurog-kurog na ako kay sakit na kaayo ang akong bisong pero giantos ako kay hadlok man ako nga iyang patyon kaming tanan, kay isog man kini kaayo si Yoyo Raul.” What do you mean by this statement?

ATTY. RECINA:

It is misleading, your Honor.

COURT:

Witness may answer.

WITNESS:

A

From 10:00 o'clock that evening I was unable to sleep because he repeatedly raped me.

COURT: (to witness)

Q

After 12:00 o'clock, did he still rape you?

A

Yes.

Q

Now, let's go back to your direct testimony. You said you were raped three (3) times only?

A

Yes.

Q

What time was the first one?

A

10:00 o'clock.

Q

The second time?

A

11:00 o'clock.

Q

And the third time?

A

12:00 o'clock.

Q

Alright 12:00 o'clock. After 12:00 o'clock you were not raped anymore?

A

No more.

Q

So it is not correct to say that the accused raped you until dawn at 5:00 o'clock in the morning?

A

That is not correct.

x x x.[22]

At around 5:00 a.m., appellant brought her back to her parents' house. She was made to sit on the table and appellant was telling her to eat. Angela refused to eat "because what he did to me was very bitter." [23] Appellant then went outside to sharpen his bolo and then lay down on the porch.

When asked why she preferred to stay at her sister's house rather than in that of her parents, Angela replied that she was afraid as her uncle, appellant, was a habitual drunkard.

Angela also testified that she did not tell her father that she filed the rape case against appellant. She was warned by the appellant not to tell anybody about what he had done to her, otherwise appellant would kill everyone in the family. She would tell nothing to her father every time she would attend the hearings in the RTC of Malaybalay. However, at the time she testified, her father had already found out about the rape case she had filed.

Appellant RAUL OBRIQUE y ANTONIO, 36 years old, single, and a farm laborer, testified [24] that he has been residing at Managok for 10 years. On March 2, 1998, he was then residing at the house of his brother Norberto Obrique. Norberto was married to Enecita and he knew that the couple had twelve children and his niece Angela was the youngest. At that time, Angela was residing with her older sister Gemma and Gemma's husband, Ernesto Gutierrez. Ernesto and Gemma's house was about 100 meters from the house where appellant was staying. [25]

In the morning of March 2, 1998, he was hired by Eteng Libetaña to haul palay at the rate of P5 per sack. He finished working in the afternoon of the same day. Thereafter, he stayed at the house of Eteng for supper. The latter had butchered a dog and the two of them drank liquor after eating. They were drinking till late that night and he spent the night at Eteng's house. [26]

On the next day, March 3, 1998, appellant went home to his brother's house at around 6:30 a.m. Upon arriving at the house, he saw Enecita and her son-in-law Ernesto having an altercation. Appellant saw Ernesto rush towards Enecita so appellant prevented him from doing so by holding Ernesto. As he held Ernesto, Enecita went upstairs. Ernesto then attempted to get a bolo but appellant pushed Ernesto and was able to get hold of the bolo first. With bolo in hand, appellant stepped back, which caused Ernesto to stumble. Using the bolo, appellant then struck Ernesto, hitting the latter on his breast and on the side below the armpit. Thereafter, appellant proceeded to the house of the barangay secretary and surrendered. [27]

It was only fifteen days later when appellant learned that a rape case had been filed against him. He denies raping Angela and infers that the reason the charges were filed against him was due to the large amount of expenses incurred for the treatment of the wounds sustained by Ernesto. [28]

On cross-examination appellant testified that he usually hauled palay for Eteng who had a two-hectare rice field.

He earned P500 that day for hauling around 100 sacks of palay. Later that night, he and Eteng drank “fighter” wine and beer. They started drinking at around 6:00 p.m. and finished at about 1:00 a.m. of the following day. Between them, they consumed ten bottles of wine and five bottles of beer. After drinking, they both went to sleep.[29]

Appellant avers that Eteng did not know that a rape case had been filed against him. Even considering that Eteng was a vital witness for his defense, appellant did not ask a friend, a relative, or even his lawyer to inform Eteng about the case so that the latter may testify in court.[30] Appellant’s lawyer, however, manifested that upon inquiry, they found out that Eteng had already left for Manila and did not leave a forwarding address. The defense had no way of contacting him.[31]

Regarding the altercation he witnessed, appellant stated that he was only about “one hand length” away from Ernesto and Enecita who were arguing about Ernesto and Gemma’s children, specifically about their disobedience.[32] While he was listening, he was still drunk from the drinking he did the previous night. It was because he was drunk that he was able to hack Ernesto.[33]

On November 15, 2000, the RTC rendered its decision:

WHEREFORE, judgment is entered finding accused Raul Obrique guilty beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act 8353 and he is hereby sentenced to suffer the penalty of death. He is further ordered to indemnify his victim, Angela Obrique, the sum of P75,000.00 and moral damages of P50,000.00.

SO ORDERED.[34]

Appellant submits the following assignment of errors:

I

THE LOWER COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASON[AB]LE DOUBT OF THE CRIME OF CHARGED AND IN SENTENCING HIM TO SUFFER THE SUPREME PENALTY OF DEATH.

II

THE LOWER COURT GRAVELY ERRED IN NOT A[C]QUITTING HIM AS THE INFORMATION UNDER WHICH HE WAS ARRAIGNED IS FATALY DEFECTIVE.

III

ASSUMING ARGUENDO THAT ACCUSED-APPELLANT RAPED THE VICTIM, THE LOWER COURT GRAVELY ERRED IN NOT CONVICTING HIM OF SIMPLE RAPE ONLY PUNISHABLE BY RECLUSION PERPETUA INASMUCH AS THE PROSECUTION FAILED TO SUBMIT AUTHENTICATED COPY OF THE VICTIM’S BIRTH CERTIFICATE.[35]

The assignment of errors, particularly the second, readily shows that appellant’s counsel failed to go through the entire records of this case. The records show that an amended information for rape was in fact filed by the prosecution and that appellant was arraigned under the amended information which already states that the crime was committed with force and intimidation.

The third assigned error, likewise, has no merit. The date of complainant’s birth was already established and admitted during the pre-trial conference. In fact, both the pre-trial agreement, as well as the pre-trial order state that “private complainant Angela Obrique was born on June 19, 1984, as evidenced by Certificate of Live Birth, marked as Exhibit ‘A’”(stress ours). The pre-trial agreement was signed by both parties and no objection was

made by counsel for appellant to said stipulation, as well as to the Certificate of Live Birth. It is to be noted that, prior to the witnesses' testimonies, the prosecution moved to make a correction on the pre-trial agreement, pertaining to the date of birth of Angela. According to the prosecution, the same should be 1984 and not 1994. The presiding judge allowed the same, observing that it was a typographical error and that in fact, the judge's copy of the same had already been corrected. There was likewise no objection on the part of the defense.[36]

Thus, we are left with two issues: 1) Whether or not the prosecution proved appellant's guilt for the crime of rape beyond reasonable doubt; and 2) whether or not the death penalty should be imposed in this case.

Appellant stands charged of qualified rape, punishable with the supreme penalty of death. Hence, a thorough review of the case is in order, particularly with regard to the evaluation of complainant's testimony.

In deciding rape cases, we are guided by the following well-established principles: (a) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, even if innocent, to disprove; (b) due to the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) 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.[37]

In his attack on Angela's credibility, appellant alleges that numerous contradictions can be found in her testimony. Appellant points out that during Angela's direct testimony, she said that appellant raped her three times, at around 10:00 p.m. and 11:00 p.m. of March 2, 1998, and at 12:00 a.m. (or midnight) of March 3, 1998. After the third rape, Angela stayed with appellant for five more hours, in the grassy area where she was raped. However, upon cross-examination, Angela averred that after she was raped for the third time, appellant continued raping her in the same grassy area. Appellant alleges that this inconsistency in her narration renders her credibility questionable.[38]

We disagree. A reading of Angela's testimony during direct examination, as well as under cross-examination, reveals that although there was indeed a little variance in her testimony as to what occurred after 12:00 a.m., she was consistent in telling the court that she was indeed raped by appellant at least three times before they returned to her parents' house at 5:00 a.m. on March 3, 1998. She was firm and consistent in her testimony as to how the rape was perpetrated, and that the perpetrator was her own uncle, appellant Raul Obrique.

It must also be remembered that under the Information filed against appellant, he was being charged for the rape that occurred on March 2, 1998. With regard to that particular instance, complainant was clear, candid and consistent. Thus, on this point, this perceived inconsistency fails to cast doubt upon Angela's credibility. That she failed accurately to remember what else happened after the three rapes, may have resulted from the trauma that she experienced after she was repeatedly violated by appellant. As pointed out by the Office of the Solicitor General (OSG), we have recognized that the errorless recollection of a harrowing incident cannot be expected of a witness when she is recounting details of so humiliating and so painful an experience as rape.[39]

Another point that appellant asserts is that Angela's conduct or behavior during and after the alleged rapes was not in accord with rational human behavior.

Appellant wonders how Angela, if indeed she experienced something as traumatic as rape, could not have attempted to seek help from her mother who was only about a hundred meters from the grassy area where the rape allegedly occurred. Particular emphasis is made on the fact that after 12:00 a.m., if Angela's account is to be believed, she still chose to stay with appellant for five more hours in the grassy area. There was no attempt on her part, according to appellant, to escape from his clutches, notwithstanding the fact that it is not shown that

appellant continued to threaten her. This deportment of hers, avers appellant, seemed too perfunctory, unconcerned, casual and nonchalant, in the face of a supposedly harrowing experience.[40]

Again, we are unconvinced. It is hardly accurate to say that Angela chose or “decided to stay”[41] with appellant for those five hours. It must be remembered that Angela had been gravely threatened by appellant, cowed by him into submission, from the time she pleaded with appellant to spare her mother’s life, up to the time when she was returned to her own home and ordered to eat. She was helpless. That she stayed with appellant in the grassy area could not have been by choice but was borne out of immense fear for her life and safety.

Moreover, although the records do not specifically state that appellant had continually issued threats during the five hours after the rapes, it cannot be said that the threats upon Angela’s life had ceased. It must be remembered that appellant carried a bolo with him at all times, ready to strike at the slightest disobedience. Thus, we cannot consider Angela’s behavior to be casual or nonchalant. Rather, her silence was a testament to her fear and her inaction was in meek obeisance to appellant.

In addition, we accord the appropriate weight on the evaluation of the RTC, which observed:

x x x

There is no doubt in the mind of the court that accused Raul Obrique is guilty of the offense of rape as charged. Private complainant Angela Obrique was frank and straightforward in her testimony. The court did not find any motive for her to falsely accuse his own uncle for so serious a crime, and in the process expose herself to shame and embarrassment. Neither was there any evil or ulterior motive shown why Enecita Obrique would also fabricate a story against the accused of a crime that will surely disgrace her daughter. x x x.[42]

Thus, we are convinced that complainant Angela’s testimony passed muster. Appellant failed to cast reasonable doubt upon complainant’s candid and straightforward account of her ordeal.

For alibi to succeed as a defense, appellant must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime.[43]

In this case, appellant’s alibi was that, at the time the alleged rapes were committed, he was at a certain Eteng Libetaña’s house, drinking with the latter, and eventually spending the night there. We note that Eteng Libetaña’s house was only two kilometers from his brother’s house, which house was but a hundred meters from the locus criminis.

Weighed against the above requirements of time and place, appellant’s alibi does not stand. It was not physically impossible for him to return to his brother’s house and perpetrate the crime. In the face of the positive and categorical testimony identifying appellant as the one who committed the rapes, the latter’s uncorroborated alibi is effectively demolished.

We now resolve the issue of whether or not the prosecution sufficiently established appellant’s guilt for qualified rape. Under the Revised Penal Code, rape is defined and penalized as follows:

Art. 266-A. Rape, When and How Committed. – Rape is committed –

- 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - a) Through force, threat or intimidation;

x x x.

2) x x x.

Art. 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

- 1) 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.

x x x

(Underscoring supplied)

To warrant the imposition of the death penalty, the concurrence of the minority of the victim and her relationship with the offender must be sufficiently alleged in the information and duly established by evidence.[44] The twin qualifying circumstances of the victim's age, as well as relationship with appellant, must be indubitably proven.[45]

With regard to complainant's age, appellant contends that the same was not sufficiently proven since the certificate of live birth presented as evidence was not authenticated. Verily, he does not deny that the birth certificate exists,[46] as it was presented and marked as evidence during the pre-trial, and it states therein that complainant was born on June 19, 1984. This makes her only about thirteen years old at the time of the offense.

As we have pointed out early on, the same certificate of live birth was presented and marked as evidence during the pre-trial conference. Its existence and contents formed part of the pre-trial agreement, as well as the pre-trial order issued by the trial court. The genuineness and authenticity of such birth certificate was not objected to, nor was its presentation opposed by appellant. It was on the basis of such birth certificate that both parties agreed to admit the stipulation that Angela was indeed born on June 19, 1984.

The fact of Angela's minority was properly alleged in the information, and her birth certificate confirming the same, is the best proof of her age.[47]

We now discuss the matter of relationship. A reading of the information shows that the prosecution failed properly to allege the qualifying circumstance of relationship. The information merely states that the complainant is appellant's niece, without specifying that appellant was a relative by consanguinity within the third civil degree. In the case of *People v. Ferolino*,[48] we ruled:

In this case, the allegation that FERLYN is ANTONIO's niece is not specific enough to satisfy the special qualifying circumstances of relationship. If the offender is merely a relation – not a parent, ascendant, step-parent, or guardian or common law spouse of the mother of the victim – it must be alleged in the information that he is a relative by consanguinity or affinity [as the case may be] within the third civil degree. That relationship by consanguinity or affinity was not alleged in the informations in these cases. Even if it was, it was still necessary to further allege that such relationship was within the third civil degree.[49]

The same pronouncement was reiterated in the recent case of *People v. Esperanza*,[50] where we found as fatally defective the allegation that the victim therein was the "niece" of appellant. We further said therein that even granting that the relationship within the third civil degree either of consanguinity or affinity was duly proved

during the trial, the same cannot justify the imposition of the death penalty because to do so would deny appellant's constitutional and statutory right to be informed of the nature and cause of the accusation against him.[51]

Appellant, therefore, can only be found guilty of simple rape and sentenced to suffer the penalty of reclusion perpetua.

Consequently, modifications are also in order with regard to appellant's civil liability. The amount of P75,000 should be reduced to P50,000.00 as the rape for which appellant can be convicted is simple rape.[52] Moral damages in the amount of P50,000 was correctly awarded by the trial court, without need for the victim to plead or prove the basis thereof beyond the fact of rape.[53]

In addition, we award the amount of P25,000 as exemplary damages on the basis of the relationship of the appellant to the victim. Although relationship was not properly alleged, said fact was nevertheless proven during trial.[54] The award is also imposed as a deterrent to people with perverse tendencies or aberrant sexual behavior, from sexually abusing their own kin.[55]

WHEREFORE, the Decision of the trial court is hereby MODIFIED. Raul Obrique y Antonio is found GUILTY beyond reasonable doubt of simple rape, defined and penalized under Article 266-A of the Revised Penal Code. He is hereby sentenced to suffer the penalty of reclusion perpetua. In addition, he is ordered to pay Angela Obrique the sum of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.

Costs de officio.

SO ORDERED.

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

[1] Rollo, pp.15-19.

[2] Rollo, p. 5.

[3] Id. at 9.

[4] Id. at 6.

[5] Id. at 10.

[6] Records, pp. 34-35.

[7] Id. at 35.

[8] Id. at 36-37.

[9] TSN, August 30, 1999, p. 10.

[10] Id. at 8-9.

[11] TSN, August 30, 1999, pp. 14-15.

[12] TSN, August 30, 1999, pp. 15-16.

[13] Id. at 16.

[14] Id. at 17-18.

[15] Id. at 18-19. For these injuries, a complaint for frustrated homicide was also filed against Raul Obrique, docketed as Criminal Case No. 9020-98. Under a plea bargain agreement, he pleaded guilty and was subsequently sentenced to suffer imprisonment and ordered to indemnify Ernesto Gutierrez; Rollo, p. 7 and 11.

[16] TSN, August 30, 1999, p. 20.

[17] Id. at 4-5.

[18] Id. at 21-22.

[19] TSN, August 30, 1999, p. 36.

[20] TSN, August 30, 1999, pp. 40-44.

[21] Id. at 48.

[22] TSN, August 30, 1999, pp. 52-55.

[23] Id. at 44.

[24] TSN, July 4, 2000.

[25] Id. at 3-5.

[26] Id. at 5-6.

[27] TSN, July 4, 2000, pp. 7-9.

[28] Id. at 11.

[29] Id. at 12-14.

[30] TSN, July 4, 2000, pp. 15-18.

[31] Id. at 22.

[32] Id. at 20-21.

[33] Id. at 22.

[34] Rollo, p. 19.

[35] Rollo, p. 35.

[36] TSN, August 30, 1999, p. 2.

[37] People v. Ruales, G.R. No. 149810, August 28, 2003, p. 5.

[38] Appellant's Brief, Rollo, p. 41.

[39] Appellee's Brief, Rollo, p. 77; citing People v. Calayca, 301 SCRA 192 (1999).

[40] Supra, note 38 at 40-41.

[41] Id. at 40.

[42] Rollo, p. 19.

[43] *People v. Del Ayre*, G.R. Nos. 139788 and 139827, October 3, 2002, p. 19.

[44] See *People v. De los Santos*, G.R. No. 137047, October 15, 2002, p. 13.

[45] *People v. Corial*, G.R. No. 143125, June 10, 2003, p. 14.

[46] Marked as Exhibit “A.”

[47] *People v. Pruna*, G.R. No. 138471. October 10, 2002, p. 17.

[48] 329 SCRA 719 (2000).

[49] *Id.* at 35.

[50] G.R. Nos. 139217-24, June 27, 2003, pp. 16-17.

[51] *Id.* at 16-17.

[52] *People v. Latag*, G.R. No. 140411-13, December 11, 2003, p. 20.

[53] *People v. Esperas*, G.R. No. 128109, November 19, 2003, p. 23.

[54] *Ibid.*

[55] See *People v. De Los Santos*, G.R. No. 137047, October 15, 2002, p. 14.

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