

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BOBBY ORENSE, APPELLANT.

G.R. NO. 152969. July 07, 2004

Ponente: VITUG, J.

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VITUG, J.:

For review before the Court is the decision[1] of the Regional Trial Court, Branch 73, of Antipolo City, finding appellant Bobby Orense guilty beyond reasonable doubt of the crime of statutory rape against his own daughter, Grace Anne R. Orense, and sentencing him to suffer the penalty of death.

The information, dated 31 March 1997, averred –

“That on or about the 2[nd] day of March 1997, in the Municipality of Antipolo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Grace Anne Orense, who is his own daughter, a minor three (3) years of age, against her will and consent.”[2]

When arraigned, appellant Bobby Orense pled “not guilty” to the charge; whereupon, trial on the merits commenced.

The case for the prosecution. –

The prosecution presented five witnesses, namely: complainant-victim Grace Anne R. Orense; her mother Noralyn A. Ramos; examining physician Tomas D. Suguitan; Dr. Olga M. Bausa, who compared the blood samples of the complainant with the bloodstains found on the “sando” shirt of appellant; and Dr. Norieta Calma-Balderama, a psychiatrist.

Grace Anne identified her father, appellant Bobby Orense, in open court. She testified that her father, whom she curtly called “bastos,” did something bad to her and that she prayed that “her father be sent to jail.” She said that she had seen the penis of appellant which he had inserted into her vagina several times. When she bled, appellant wiped the blood off with his shirt and then licked her private parts. When asked about her age, she answered that she was four years old.

Noralyn Ramos Orense, mother of Grace Anne, confirmed being married to appellant Bobby Orense, their marriage twice solemnized, on 08 March 1988[3] and on 16 April 1988,[4] and that complainant Grace Anne was born on 08 October 1993 per her birth certificate.[5] The family lived in Coconut Street, FEU Village, Brgy. Mambungan, Antipolo, Rizal. Noralyn was not home in the afternoon of 02 March 1997. Returning home at six o’clock that evening, she noticed that Grace Anne was unusually quiet (matamlay). Around noontime the following day, Grace Anne, who just had a bowel movement, complained of pains in her private parts while Noralyn was giving her a bath. It was then when she learned for the first time of the rape incident. For about a week, Noralyn had the same observation whenever she would give Grace Anne a bath. Grace Anne also

complained of frequent stomach pains and difficulty in urinating. The matter prompted Noralyn to call the “hotline” of Bantay Bata[6] where she was told to have her child examined by a medico-legal officer. She and Grace Anne proceeded to the Sto. Niño de San Antonio Maternity and General Hospital. She was advised to have the child undergo urinalysis. Dr. D. S. Sta. Ana, a pathologist, with the assistance of medical technologist Editha A. Santos, conducted the urinalysis and found Grace Anne to be suffering from urinary tract infection. Dr. Tomas D. Suguitan, a medico-legal officer, examined Grace Anne and found her to be a non-virgin.

On 24 March 1997, Noralyn went to the Rizal CIG Provincial Office, Karangalan Village, in Cainta, Rizal, to execute a sworn statement[7] on the rape perpetrated by appellant. When apprehended, appellant told Noralyn that he would agree to leave the house and financially support them provided she would drop the charge against him. Noralyn declined. Appellant was detained at the Antipolo Municipal Jail. Since Grace Anne continued to have nightmares, Noralyn brought her daughter to the Child Protection Unit of the Philippine General Hospital for psychiatric treatment.

Dr. Sta. Ana and Editha A. Santos of the Sto. Niño De San Antonio Maternity and General Hospital in Marcos Highway, Barrio de la Paz, Pasig City, undertook urinalysis on Grace Anne. The report,[8] dated 25 March 1997, read:

“STO. NINO DE SAN ANTONIO
MATERNITY AND GENERAL HOSPITAL
Marcos Highway, Barrio dela Paz
Pasig City
Tel. 645-30-60

URINALYSIS

Name: Orense, Grace Anne Age: Sex: Status: Date: 3/17/97

Physician Room: Ward OPD

Color yellow Pus Cells 14-16/hpf

Transparency hazy RBC 0-2/hpf

Reaction ph 6.0 Cast

Specific Gravity 1.020 Epithelial Cells few

Sugar negative Bacteria

Protein negative Parasite

Billirubin Crystals Uric Acid few

Ketones Pregnancy Test

Sgd. Sgd.

EDITHA A. SANTOS DR. D. S. STA. ANA
MEDICAL TECHNOLOGIST PATHOLOGIST

“STO. NINO DE SAN ANTONIO
MATERNITY AND GENERAL HOSPITAL
Marcos Highway, Barrio dela Paz

Pasig City
Tel. 645-30-60

URINALYSIS

Name: Orense, Grace Anne Age: 3 1/2 Sex: F Status: Date: 3/25/97

Physician Room: Ward OPD: xx

Color yellow Pus Cells 2-4/hpf

Transparency slightly turbid RBC 0-1/hpf

Reaction ph 6.0 Cast

Specific Gravity 1.015 Epithelial Cells few

Sugar negative Bacteria

Protein trace Parasite

Billirubin Crystals a. urates few

Ketones Pregnancy Test

Sgd. Sgd.

MEDICAL TECHNOLOGIST DR. D. S. STA. ANA
PATHOLOGIST”

Dr. Tomas D. Suguitan, Police Senior Inspector and Medico-Legal Officer of the Philippine National Police Crime Laboratory Group in Camp Crame, Quezon City, examined Grace Anne. Medico-Legal Report No. M-1058-97,[9] dated 20 March 1997, yielded the following findings; viz:

“PURPOSE OF LABORATORY EXAMINATION:

To determine physical signs of sexual abuse.

“FINDINGS:

"GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female child. Breasts are undeveloped. Abdomen is flat and soft.

“GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with shallow healed laceration at 9 o'clock position. External vaginal orifice admits tip of the examiner's smallest finger.

“CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of application of any form of violence.

“REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.”

Dr. Suguitan testified that he found a shallow healed laceration at the nine o'clock position which could have been caused by the insertion of a blunt object, such as a penis or a finger, and not merely because of a bad fall.

Dr. Olga M. Bausa, Police Senior Inspector and Medico-Legal Officer of the Philippine National Police Crime Laboratory Service in Camp Crame, Quezon City, compared the 2 ml. blood sample taken from Grace Anne with that of the bloodstains found on a “sando” shirt[10] belonging to appellant. The biochemical examination on the shirt gave positive result for the presence of human blood belonging to blood type “B.” Medico-Legal Report No. S-233-97,[11] dated 10 November 1997, showed that both specimens belong to blood type “B”:

“SPECIMEN SUBMITTED:

Specimen A — Living person of Grace Anne R. Orense

Specimen B — One (1) sando shirt colored white with alleged bloodstains.

“PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of blood, its origin and its corresponding blood type.

“FINDINGS:

Biochemical examination conducted on specimen B gave POSITIVE result to the test for the presence of human blood belonging to blood group ‘B.’

Blood typing conducted on the living person of Grace Anne R. Orense showed that she belong[s] to blood group ‘B.’

“CONCLUSION:

Specimen A belongs to human blood group ‘B’.

Specimen B revealed the presence of human blood belonging to blood group ‘B’.”

Dr. Norieta Calma-Balderama, an Adult and Child Psychiatrist of the Child Protection Unit of the Philippine General Hospital, testified that she handled the psychiatric treatment. Dr. Balderama used the “play and interview” approach in talking to Grace Anne. During the interview, she observed that Grace Anne repeatedly said the words “titi ni Papa,” “dugo,” daliri ni Papa,” and “dito hinawakan” (referring to her private parts) even without being asked about the abuse. She concluded that the girl was telling the truth. When Grace Anne visited the center for the seventh time, she showed manifestations of one who had experienced a traumatic event.

The version of the defense. —

Appellant Bobby Orense, testifying in his own behalf, admitted being married to Noralyn. The couple had three children born of the marriage, namely, Angelita, Grace Anne, and Norbert. Appellant denied having raped Grace Anne. He claimed that at eight o'clock in the morning of 02 March 1997, he was at his father's house in Blumentritt, Manila, to meet a friend who would accompany him to renew his security guard license. By eleven o'clock in the morning, appellant was at the National Bureau of Investigation (NBI) in U.N. Avenue, Manila, to secure an NBI clearance which he needed for his job application. He stayed there until two o'clock in the afternoon. He then proceeded to Camp Crame to renew his license as a security guard and left the place at four o'clock in the afternoon. At around six o'clock in the evening, appellant arrived home only to find his clothes in a trash can. According to appellant, his wife did it out of anger as he was away for so long. Appellant said that his wife treated him like a house helper and obliged him to do household chores, like washing clothes and doing the

dishes, that prompted him to stay with his father at Blumentritt, Manila, for about a month prior to 02 March 1997.

The decision under review. –

On 24 August 2001, the court a quo rendered a decision, finding Bobby Orense guilty of statutory rape; it concluded:

“WHEREFORE, premises considered, accused Bobby Orense is hereby found guilty beyond reasonable doubt of the crime of statutory rape and is sentence[d] to suffer the penalty of death in accordance with Republic Act [No.] 7659. The accused is also ordered to pay the victim the amount of P50,000.00 as indemnity.”[12]

In this appeal, appellant contends that the prosecution has failed to prove his guilt beyond reasonable doubt.

As so often said, this Court, is guided in its review of trial court decisions in rape cases by certain guidelines, i.e., (1) that an accusation for rape can be made with facility; (2) that the crime is difficult to prove but more difficult for the person accused, though innocent, to disprove; (3) that, in view of the nature of the offense of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and (4) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.[13] More frequently than not, however, the thrust of the issues focuses on the credibility of the victim. In this respect, great reliance is made on the evaluation made by the trial court because of its unique opportunity to observe the witnesses, particularly their demeanor, conduct, and attitude, during the direct and cross-examination by counsel.[14]

Appellant doubts the credibility of Grace Anne, being still a child, to testify. In *People v. Pruna*,^[15] the Court has observed:

“As a general rule, when a witness takes the witness stand, the law, on ground of public policy, presumes that he is competent. The court cannot reject the witness in the absence of proof of his incompetency. The burden is, therefore, upon the party objecting to the competency of a witness to establish the ground of incompetency. (VII Vicente J. Francisco, Part I, 234 [1997 Ed.], citing Wharton’s Criminal Evidence, Section 1152 [11th Ed.])

“Section 21 of Rule 130 of the Rules on Evidence enumerates the persons who are disqualified to be witnesses. Among those disqualified are ‘[c]hildren whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and relating them truthfully.’

“No precise minimum age can be fixed at which children shall be excluded from testifying. The intelligence, not the age, of a young child is the test of the competency as a witness. (Ibid., p. 242, citing 58 Am. Jur. 97.) It is settled that a child, regardless of age, can be a competent witness if he can perceive and, in perceiving, can make known his perception to others and that he is capable of relating truthfully the facts for which he is examined. (*People v. Librando*, 335 SCRA 232, 244 [2000].)

“In determining the competency of a child witness, the court must consider his capacity (a) at the time the fact to be testified to occurred such that he could receive correct impressions thereof; (b) to comprehend the obligation of an oath; and (c) to relate those facts truly to the court at the time he is offered as a witness. (2 Florenz D. Regalado, Remedial Law Compendium 608 [2001 Ed.]. See also VII Francisco 243, citing *Wheeler v. U.S.*, 159 U.S. 523.) The examination should show that the child has some understanding of the punishment which may result from false swearing. The requisite appreciation of consequences is disclosed where the child states that he knows that it is wrong to tell a lie, and that he would be punished if he does so, or that he uses language which is equivalent to saying that he would be sent to hell for false swearing. (VII Francisco 243, citing 3 Jones on Evidence 1296-1298.) A child can be disqualified only if it can be shown that his mental maturity renders him incapable of perceiving facts respecting which he is being examined and of relating them

truthfully. (People v. Virtucio, 326 SCRA 198, 205 [2000].)

“The question of competency of a child-witness rests primarily in the sound discretion of the trial court. This is so because the trial judge sees the proposed witness and observes his manner of testifying, his apparent possession or lack of intelligence, as well as his understanding of the obligation of an oath. (People v. De la Cruz, G.R. No. 135022, 11 July 2002, 384 SCRA 375. See also People v. De la Cruz, 276 SCRA 352, 357 [1997]; People v. Operana, 343 SCRA 43, 63 [2000].) Since many of the witness’ manners cannot be photographed into the record, the finding of the trial judge will not be disturbed or reversed unless from what is preserved it is clear that such finding was erroneous. (People v. De la Cruz, G.R. No. 135022, 11 July 2002, 384 SCRA 375.)”[16]

The complainant, despite her age, was able to respond well to questions that convinced the trial court of the victim’s competency to testify.

“PUBLIC PROSECUTOR:

Are you studying right now?

“A: Not yet, sir.

“Q: Did somebody already tell you about God?

“A: Not yet.

“Q: But have you heard about Jesus?

“A: No, sir.

“Q: What about prayer, do you pray?

“A: Yes, sir.

“Q: To whom do you pray?

“A: To Jesus.

“Q: So, you know about Jesus?

“A: Yes, sir.

“Q: Do you know the things that make Jesus mad?

“A: No, sir.

“Q: Do you know the things that make Jesus happy?

“A: No, sir.

“Q: What things do you pray to Jesus?

“A: That Papa be placed in jail.

“Q: That is what you pray to Jesus?

“A: Yes, sir.

“Q: Did Papa [do] something wrong to you?

“A: Yes, sir.

“Q: Why do you say that something wrong or something was done to you?

“A: `Kasi bastos po si Papa.’

“Q: When a person does something that is `bastos’ or obscene, is that bad?

“A: Yes, sir.

“Q: Who told you that it is bad?

“A: Me.

“Q: How did you learn that it was bad?

“A: `Kaya ko lang natutunan iyon, nasasagot lang ako ni Mama.’

“Q: Do you mean to say that you ask your Mama if something is `bastos,’ and your mother tells you it is `bastos.’

“A: Yes, sir.

“Q: And if a person does something `bastos’ to you, you will tell the truth about what happened?

“A: I am telling the truth, sir.

“Q: Do you know what will happen to you if you tell a lie?

“A: No, sir.

“Q: Do you know if you are bad?

“A: No, sir.

“Q: Is telling the truth bad?

“A: No, sir.

“Q: What about telling a lie, is it bad?

“A: Yes, sir.

“Q: What would happen to someone who is telling a lie?

“A: Jesus will get angry.

“Q: Do you wish Jesus to be mad at you by not telling the truth?

“A: No, sir, and I am not telling a lie.

“DEFENSE COUNSEL:

The witness categorically said that she does not know what lie is all about, and what truth is all about.

“PRIV. PROSECUTOR:

The witness also said that Jesus will get mad if she [tells] a lie.

“PUBLIC PROSECUTOR:

We submit to the discretion of the Court.

“COURT:

Swear the witness.”[17]

Appellant suggests that the testimony of Grace Anne might have just been fabricated to suit the rape charge. Although her story might lack vividness, her narration, nevertheless, has sufficiently described the sexual assault on her. She testified:

“INTERPRETER:

Do you swear to tell the truth and nothing but the truth in this proceedings?

“A: Yes, sir.

“INTERPRETER:

State your name and personal circumstances.

“A: Grace Ann[e] Orense, five years old, and residing at Antipolo.

“PRIV. PROSECUTOR:

The testimony of the witness is being offered to prove that on March 1997, she was sexually abused and raped by her father, and to prove the other allegations in the complaint.

“PUBLIC PROSECUTOR:

May we make it of record that the private prosecutor is still authorized to handle the prosecution of this case.

“COURT:

Proceed.

“Q: Grace Ann[e], do you know who your father is?

“A: Yes, sir, Bobby.

“Q: Is he here in this courtroom?

“A: Yes, sir.

“Q: Can you point to your father?

“A: Yes, sir. (Witness pointing to a person inside the courtroom who identified himself as Bobby Orense.)

“Q: Did your father do anything bad to you?

“A: Yes, sir.

“Q: And [did] you tell your mother about this bad thing your father did to you?

“A: Yes, sir.

“Q: Did you tell your mother, `titi ni Papa?’

“A: Yes, sir.

“Q: Have you seen the penis of your father?

“A: Yes, sir.

“Q: What did your father do when you saw his penis?

“A: He pulled it.

“Q: Did he put his penis in your vagina?

“A: Yes, sir.

“Q: How many times did he do that?

“A: `Matagal na po.’

“Q: What happened after your father placed his penis in your vagina?

“A: When he placed his penis inside my vagina, he did not press it hard. But when he placed his finger inside my vagina, he pressed it really hard.

“Q: Did you acquire any wound as a result of the placing of the penis inside your vagina?

“A: Yes, sir.

“Q: Did you see any blood when you had this wound?

“A: Yes, sir.

“Q: What did your father do when you had blood in your vagina?

“A: He wiped it with his clothes.

“Q: Aside from pressing his penis and his finger in your vagina, did your father do anything else to you Grace Ann[e]?

“A: Yes, sir, he licked my vagina.

“PRIV. PROSECUTOR:

May I make it of record that the child even pointed to her vagina while answering.

Grace Ann[e], does your father still live with you?

“A: Yes, sir.

“Q: Where did your father do these things to you?

“A: Outside, sir.

“Q: Did he do it inside your house?

“A: Yes, sir.

“COURT:

Did you cry when this happened?

“A: No, your [H]onor.

“COURT:

Was it not painful when your father did these things to you?

“A: It was not painful, your [H]onor.

“COURT:

Proceed.

“PRIV. PROSECUTOR:

Do you still see your father, Grace Ann[e]?

“A: Yes, sir.

“Q: Do you still see him in your house?

“A: Yes, sir.

“Q: Grace Ann[e], aside from your mother, did you tell anybody else what your father has done to you?

“A: Yes, sir.

“Q: To whom did you tell about the things that your father did to you?

“A: When I reported the matter to my mother, my father was not in the room.

“Q: Were you brought to a doctor when you told your mother what your Papa did to you?

“A: Yes, sir.

“Q: And did you tell the Doctor what happened to you?

“A: Yes, sir.

“Q: Is this doctor a man or a woman?

“A: A woman.

“Q: Is the name of the doctor, Dr. Calma?

“A: Yes, sir.

“PRIV. PROSECUTOR:

I have no further questions.”[18]

During cross-examination, Grace Anne also did well in maintaining her account of the incident.

“COURT:

Cross?

“DEFENSE COUNSEL:

With the permission of the Court.

“COURT:

Proceed.

“Q: You said that your Papa did something `bastos' to you, `tama ba iyon?’

“A: No, sir.

“Q: Is it not that your mother Noralyn told you that your father did something `bastos' to you?

“A: Yes, sir.

“Q: Is it not that it is your mother who told you, `titi ni Papa?”

“A: Yes, sir.

“Q: And it was and still is your Mama Noralyn who wants your Papa to be placed in jail?

“PRIV. PROSECUTOR:

Objection, your [H]onor.

“COURT:

Witness may answer.

“A: `Kasi salbahe siya.’

“Q: You said that you were brought to a woman doctor and that her name is Dr. Calma, is that correct?

“A: Yes, sir.

“Q: Do you still recall the place where you were brought to the doctor?

“A: No, sir.

“Q: Who brought you to Dr. Calma?

“A: Mama.

“Q: Only the two of you went to the doctor?

“A: Yes, sir.

“Q: Did your mother tell you what to tell Dr. Calma?

“A: No, sir.

“DEFENSE COUNSEL:

That will be all for the witness.”[19]

Far from detracting from her veracity, the minor discrepancies or lapses that might have been committed by Grace Anne, just to the contrary, would tend to bolster her testimony.[20] Indeed, her narration was corroborated, not only by Noralyn Orense (Grace Anne’s mother) but, significantly, by the medical report presented by the prosecution; i.e., that blood samples of Grace Anne, belonging to blood type “B,” matched with the bloodstains found in appellant’s shirt which, according to Grace Anne, appellant used to wipe off the blood from her; that the results of the urinalysis showed that Grace Anne had urinary tract infection; that the hymenal lacerations found could have been caused by the insertion of an object like a penis or a finger; and that Grace Anne showed manifestations of an abused child who had undergone a traumatic event. The fact that there were no signs of physical violence would not militate against the occurrence of rape, proof of external injuries not being indispensable in a prosecution for rape. Clearly, appellant took advantage of his moral ascendancy over his defenseless daughter. Neither would the presence of spermatozoa be essential to prove rape.[21]

The bare and uncorroborated denial of appellant and his defense of alibi cannot prevail. Denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.[22] In order that alibi can prosper, not only must an accused prove his being in another place at the time of the commission of the crime, but also that it would have been impossible for him, given the circumstances, to be at the crime scene at the appointed time.[23]

Article 335 of the Revised Penal Code, as so amended by Republic Act No. 7659, 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.

“1. By using force or intimidation;

“2. When the woman is deprived of reason or otherwise unconscious; and

“3. When the woman is under twelve years of age or is demented.

“The crime of rape shall be punished by reclusion perpetua.

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

“When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

“When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

“When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

“The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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.

“2. When the victim is under the custody of the police or military authorities.

“3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

“4. When the victim is a religious or a child below seven (7) years old.

“5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

“6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

“7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation. (As amended by Sec. 11, RA 7659.)”

People v. Pruna[24] has set forth the guidelines in the appreciation of the age of the victim, either as an element of the crime or as a qualifying circumstance, viz:

“1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

“2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

“3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim’s mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient

under the following circumstances: “a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

“b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

“c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

“4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim’s mother or relatives concerning the victim’s age, the complainant’s testimony will suffice provided that it is expressly and clearly admitted by the accused. (People v. Velasco, G.R. Nos. 135231-33, 28 February 2001 [353 SCRA 138]; People v. Remudo, G.R. No. 127905, 30 August 2001 [364 SCRA 61]; People v. Llanita, G.R. No. 134101, 05 September 2001 [364 SCRA 505]; People v. Agustin, G.R. Nos. 135524-25, 24 September 2001 [365 SCRA 667].)

“5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

“6. The trial court should always make a categorical finding as to the age of the victim.”

The relationship of the complainant to the appellant was sufficiently proved. Noralyn testified having been married to appellant. The marriage was twice celebrated, the first on 08 March 1988 at a church in Ermita, Manila and on 16 April 1988 at the San Roque De Manila Parish. A certified true copy of the 08 March 1988 marriage certificate and a duplicate original of the one contracted on 16 April 1988 were presented in court. After due comparison, the photocopies of these documents were duly marked, respectively, Exhibit “A” and Exhibit “B.” The prosecution, however, failed to satisfy the Pruna test to warrant the imposition of the death penalty. The Certificate of Live Birth of Grace Anne presented to the court is neither an original nor a certified true copy. When Noralyn took the witness stand, neither was an original or a certified true copy of the birth certificate shown in court to at least compare it with a bare photocopy marked as Exhibit “B.” Most importantly, it was not shown that the authentic document had been lost or destroyed or otherwise unavailable required in Pruna.

The civil indemnity of P50,000.00 awarded by the trial court is consistent with the prevailing jurisprudence. Additionally, moral damages of P50,000.00 must be awarded for in crimes of rape it is to be assumed that the victim has suffered such damages.[25] Exemplary damages of P25,000.00 must also be awarded to the victim, the daughter of appellant, as has been sanctioned in People v. Catubig[26] pursuant to Article 2230 of the Civil Code.

WHEREFORE, the decision of the Regional Trial Court, Branch 73, Antipolo City, finding appellant Bobby Orense guilty beyond reasonable doubt of the crime of rape is AFFIRMED with MODIFICATION in that the penalty of death is reduced to reclusion perpetua and, in addition to the P50,000.00 civil indemnity awarded by the trial court, appellant is ordered to pay complainant Grace Anne R. Orense, P50,000.00 moral damages and P25,000.00 exemplary damages. Costs de oficio.

SO ORDERED.

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

[1] Per Executive Judge Mauricio M. Rivera.

[2] RTC Records, p. 1.

[3] Officiated by Msgr. Danilo D. Henson, a bishop, at 1050 Concepcion Street, Ermita, Manila per Marriage Contract (Exh. "A"), RTC Records, p. 265.

[4] Officiated by Rev. Fr. Bing Gregorio Pechueco, Asst. Parish Priest of the San Roque De Manila Parish in Blumentritt, Manila per Marriage Contract (Exh. "B"), RTC Records, p. 266.

[5] Exhibit "C," RTC Records, p. 267.

[6] A non-governmental organization that protects the rights and welfare of the children.

[7] The Sinumpaang Salaysay dated 24 March 1997 was not marked as an exhibit.

[8] Exhibit "D," RTC Records, p. 268.

[9] Exhibit "E," RTC Records, p. 269.

[10] Exhibit "G."

[11] Exhibit "F," RTC Records, p. 270.

[12] RTC Records, p. 235.

[13] *People v. Baniguid*, G.R. No. 137714, 08 September 2000 (340 SCRA 92); *People v. Baygar*, G.R. No. 132238, 17 November 1999 (318 SCRA 358); *People v. Maglente*, G.R. Nos. 124559-66, 30 April 1999 (306 SCRA 546); *People v. Lopez*, G.R. No. 129397, 08 February 1999 (302 SCRA 669); *People v. Sta. Ana*, G.R. Nos. 115657-59, 26 June 1998 (291 SCRA 188).

[14] *People v. Brondial*, G.R. No. 135517, 18 October 2000 (343 SCRA 600); *People v. Dizon*, G.R. Nos. 126044-45, 02 July 1999 (309 SCRA 669); *People v. Maglente*, G.R. Nos. 124559-66, 30 April 1999 (306 SCRA 546); *People v. Banela*, G.R. No. 124973, 18 January 1999 (301 SCRA 84).

[15] G.R. No. 138471, 10 October 2002 (390 SCRA 577).

[16] At pp. 591-593.

[17] TSN, Grace Ann[e] Orense, 24 November 1998, pp. 3-6.

[18] TSN, Grace Ann[e] Orense, 24 November 1998, pp. 6-11.

[19] TSN, Grace Ann[e] Orense, 24 November 1998, pp. 11-13.

[20] *People v. Maglente*, G.R. Nos. 124559-66, 30 April 1999 (306 SCRA 546).

[21] *People v. Freta*, G.R. Nos. 134451-52, 14 March 2001 (354 SCRA 385).

[22] *People v. Freta*, G.R. Nos. 134451-52, 14 March 2001 (354 SCRA 385); *People v. Martinez*, G.R. No. 130606, 15 February 2000 (325 SCRA 601); *People v. Maglente*, *supra*.

[23] *People v. Fabre*, G.R. No. 146697, 23 July 2002 (385 SCRA 185); *People v. Payot*, G.R. No. 119352, 08 June 1999 (308 SCRA 43).

[24] G.R. No. 138471, 10 October 2002 (390 SCRA 577).

[25] *People v. Magallanes*, G.R. No. 136299, 29 August 2003; *People v. Cariñaga*, G.R. Nos. 146097-98, 26 August 2003; *People v. Eclera*, G.R. No. 144402, 14 August 2003; *People v. Rosario*, G.R. No. 144428, 06

August 2003; *People v. Rabago*, G.R. No. 149893, 02 April 2003; *People v. Prades*, G.R. No. 127569, 30 July 1998 (293 SCRA 411).

[26] G.R. No. 137842, 23 August 2001 (363 SCRA 621), cited in *People v. Nerio*, G.R. No. 142564, 26 September 2001 (366 SCRA 63); *People v. Marahay*, G.R. Nos. 120625-29, 28 January 2003 (396 SCRA 129); *People v. Manallo*, G.R. No. 143704, 28 March 2003; *People v. Evina*, G.R. No. 124830, 27 June 2003.

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