

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO PANGILINAN Y TRINIDAD, ACCUSED-APPELLANT.

G.R. NO. 171020. March 14, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01414 dated 16 November 2005 which affirmed with modification the decision[2] of the Regional Trial Court (RTC) of Dinalupihan, Bataan, Branch 5, in Criminal Cases Nos. DH 586-97 and 587-97, finding appellant Alfredo Trinidad Pangilinan guilty of two counts of rape. The Court of Appeals upheld the two death sentences imposed on appellant but modified the award of damages.

Two informations were filed charging appellant with raping AAA,[3] his daughter. The informations read:

Crim. Case No. DH-586-97

That in or about the month of September 1995 at Brgy. Pita, Dinalupihan, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, thru force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed to have sexual intercourse with the offended party, AAA, an eleven (11) year old minor girl, who is his daughter against the will and consent of the latter, to her damage and prejudice.[4]

Crim. Case No. DH-587-97

That in or about the month of January 1997 at Brgy. Pita, Dinalupihan, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, thru force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed to have sexual intercourse with the offended party, AAA, an eleven (11) year old minor girl, who is his daughter against the will and consent of the latter, to her damage and prejudice.[5]

On 5 May 1997, appellant, who was arrested and detained with no bail recommended, filed a petition for bail.[6]

In the hearings for the petition for bail, the prosecution presented the private complainant-victim, BBB, and Dr. Melinda Layug.

From the evidence presented, the prosecution's version of what transpired, as summarized by the Office of the Solicitor General, is quoted by the Court of Appeals:

BBB is the wife of appellant Alfredo Pangilinan. On May 9, 1985, BBB gave birth to AAA. Their family lived in Barangay Pita, Bayan-bayanan, Bataan.

On September 9, 1995, around 9 o'clock in the evening, AAA, her brother and two (2) sisters were asleep. Suddenly, she felt her father, herein appellant, approach their bed, remove her shorts and lay on top of her. She could not move. Appellant proceeded to remove the rest of her clothes. AAA struggled with all her strength even though her hands were pinned down by appellant above her head. AAA cried and shouted for help, but

appellant quickly covered her mouth. When appellant attempted to insert his penis into her vagina, AAA unceasingly resisted until appellant finally stopped his attack and left her.

Around 11 o'clock the following night, appellant once again crawled beside AAA while she was asleep beside her siblings. He removed all her clothes. When AAA woke up, she resisted appellant with all her strength and shouted for her grandmother's help, but he quickly covered her mouth, thus stifling her cries. Appellant, who was naked, mounted AAA and kissed her on different parts of her body. After a while, AAA's energy waned. AAA felt excruciating pain when appellant forcibly inserted his penis in her vagina and had sexual intercourse with her. The following morning, AAA was feverish. She saw blood oozing out of her vagina. Scared and confused, AAA confided to her eight (8) year-old brother CCC that appellant raped her the previous night.

The following week, appellant repeated his dastardly act. While his children were playing in the creek behind their house, appellant pulled AAA, who was busy washing dishes, inside their house. Appellant brought her upstairs and pushed her down to the floor. As before, AAA tried to push appellant away and scream for help but he covered her mouth and easily overcame her resistance. Appellant removed AAA's clothes, mounted her and had sexual intercourse with her. After a few minutes, appellant stood up, put on his clothes and ordered AAA to take a bath.

That same evening, appellant raped AAA again. After doing so, he threatened to kill her and her siblings should she report him to the authorities. During the month of September in 1995, appellant repeatedly raped AAA. AAA lost count of the number of times appellant had raped her. Fearing for her safety and that of her siblings, AAA kept her silence.

For a while, AAA thought that appellant would no longer abuse her. She was wrong. Around 11 o'clock in the evening of January 5, 1997, AAA felt her father grope for her while she was sleeping in their room. Like in the past, appellant removed her clothes. AAA resisted and struggled to free herself in vain. Appellant was too heavy. Appellant mounted her, inserted his penis into her vagina and had sexual intercourse with her.

AAA's fear of her father intensified. His stares stopped her from confiding her ordeal to her mother, who had just arrived from Singapore.

On March 16, 1997, BBB informed her children that she was leaving for Singapore again. DDD, AAA's grandmother, advised BBB not to leave her children. She told BBB that appellant had been molesting AAA. Shocked by the revelation, BBB confronted AAA. AAA tearfully confessed everything to her mother. BBB could only embrace her daughter tightly after hearing the sordid details.

That same day, BBB confronted appellant. As expected, appellant denied any wrongdoing and hastily left their house.

After the confrontation, BBB decided to leave appellant.

On March 17, 1997, BBB brought AAA to the Dinalupihan District Hospital where she was examined by Dra. Melinda Layug. The examination revealed that the victim had a non-parous introitus with an old healed hymenal laceration at the 4 o'clock position. Thus the instant case was filed.[7]

On 30 October 1997, the prosecution formally offered its evidence consisting of Exhibits "A" to "E," with sub-markings, and the testimonies of its witnesses, praying that they be admitted and considered in the resolution of the petition for bail, and that the same be considered as part of its evidence in chief.[8] On 15 December 1997, appellant filed his comment and/or opposition to the prosecution's offer of evidence.[9]

In an Order dated 23 April 1998, the trial court, finding that the evidence against the accused is strong, denied appellant's petition for bail.[10] Thereafter, the defense presented its evidence with appellant as the sole witness. Appellant testified as follows:

Appellant narrated that he left for Saudi Arabia on 27 May 1990 and returned on 22 September 1992. Upon his return, a lot of people informed him that his wife was having an affair. Complainant even told him he is not the father of his youngest daughter. As a result, he lost interest in going back to Saudi Arabia, merely stayed at home and did not look for work. He revealed that before he left for Saudi Arabia, his daughter AAA was sweet to him, that is, she hugged and kissed him. When he returned from Saudi Arabia, he said AAA became sweeter.

In September 1995, his wife was in Singapore working as an overseas contract worker. He kept in touch with her through phone and letters. Once, while he was writing a letter to his wife, he said he became drunk and was not able to finish the letter. He felt dizzy, lay down and slept. He was awakened by the embraces and kisses of a person who turned out to be his daughter, AAA. He said there was malice in the way his daughter embraced and kissed him. He wondered why his daughter was kissing him the way she did. He embraced her but he did not allow anything to happen, she being his daughter.

Appellant further testified that the same incident happened again, but this time, he was not drunk. He said AAA approached him wanting to have sex with him by pointing her finger on her palm. He advised her that sex is only done by married couples. He claimed he did not have any sexual relationship with her although she seduced him. He added he did not know of any reason why she is mad at him and why she filed the rape cases against him.

On 9 June 1999, the trial court, having discovered that appellant had not yet been arraigned, scheduled his arraignment. On 17 June 1999, appellant, with the assistance of counsel de oficio, pleaded not guilty to the charges against him.[11] Since the prosecution adopted all the evidence it adduced during the hearing for the petition for bail as part of its evidence-in-chief, which evidence the trial court admitted, the trial court deemed the cases submitted for decision.

In its Decision dated 9 September 1999, the trial court convicted appellant of two counts of rape and imposed on him the capital punishment for each count. The dispositive portion of the decision reads:

WHEREFORE, this Court finds the accused Alfredo Pangilinan Y Trinidad GUILTY beyond reasonable doubt of RAPE in both cases, Criminal Cases Nos. DH-586-97 and 587-97, and hereby sentences him to suffer the penalty of DEATH for each case and to indemnify the victim, AAA, with the sum of FIFTY THOUSAND (P50,000.00) PESOS.[12]

The trial court was convinced that private complainant was raped several times by her father during the month of September 1995, and once on 5 January 1997. It accorded credence to the testimony of private complainant who, at 12 years old testified in a spontaneous and direct manner. It found private complainant to be immature, innocent, naïve, unfamiliar with sex and incapable of inventing or fabricating charges against her own father when the sexual assaults were committed in September 1995 and January 1997 when she was only 10 or 11 years old.

The trial court brushed aside appellant's defense of denial. It said it is simply unbelievable for a ten-year old girl to be as malicious as appellant described his daughter. It explained that the minor inconsistencies in private complainant's testimony did not in any way affect her credibility.

In conclusion, the trial court said:

In this society, at a time when incestuous acts are not uncommon, and with the situation where the accused and offended party were in, when the wife of the accused was away working in Singapore, it is easy to believe that his loneliness urged him to sexually abuse his daughter. The offended party had no ill motive in filing the case against him. It was even the paternal grandmother who initially informed her mother that the accused was raping his daughter while she was gone. For fear that the accused might do it again, the paternal grandmother was trying to prevail over the mother who was again planning to leave for abroad. The one responsible for

bringing the matter to the attention of the mother who later reported to the police was no less than the mother of the accused. A mother would not allow herself to be used to make her son suffer, (e)specially if the charges are fabricated. She heard the cries/shouts from the offended party while the accused was sexually assaulting her. What she did was to tell the truth. Is accused blaming her own mother for simply telling the truth?[13]

Inasmuch as the penalty it imposed was the death penalty, the trial court forwarded the records of the case to the Supreme Court for automatic review pursuant to Section 10, Rule 122 of the 2000 Rules of Criminal Procedure.[14] However, pursuant to our ruling in *People v. Mateo*,[15] the case was transferred to the Court of Appeals for appropriate action and disposition.[16]

On 16 November 2005, the Court of Appeals affirmed the death penalties imposed by the trial court but modified the amounts of damages awarded. The decretal portion of the decision reads:

WHEREFORE, premises considered, the Decision dated September 9, 1999 of the Regional Trial Court, Branch V, Dinalupihan, Bataan in Criminal Case Nos. 586-97 and 1257 (sic), finding appellant Alfredo Pangilinan guilty beyond reasonable doubt of rape in both cases and sentencing him to suffer the supreme penalty of death is AFFIRMED with the modification that he is ordered to pay the victim AAA, P75,000.00 as civil indemnity and P50,000.00 as moral damages in each case. Appellant is further ordered to pay an additional amount of P25,000.00 as exemplary damages, also in each case.[17]

On 27 January 2006, the Court of Appeals elevated the records of the case to the Supreme Court for automatic review.[18] Thereafter, in our resolution dated 28 February 2006, the parties were required to submit supplemental briefs, if they so desired, within thirty (30) days from notice. The parties opted not to file supplemental brief on the ground they had fully argued their positions in their respective briefs.

Appellant makes the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF TWO (2) COUNTS OF RAPE DESPITE THE FACT THAT HE WAS NOT PROPERLY ARRAIGNED, AND WAS NOT INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM BEFORE THE EVIDENCE FOR THE PROSECUTION WAS PRESENTED.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT DESPITE THE INSUFFICIENCY OF EVIDENCE FOR THE PROSECUTION.

On the first assigned error, appellant assails his conviction because he was not properly arraigned. Since he was arraigned only after the case was submitted for decision, said irregularity, he argues, is a procedural error which is prejudicial to the appellant and is tantamount to denial of his constitutional right to be informed of the accusation against him. He claims that his subsequent arraignment did not cure the defect in the trial proceedings because at the time the petition for bail was heard, the trial court had not yet acquired jurisdiction over his person.

Appellant is mistaken. When the hearings for his petition for bail were conducted, the trial court had already acquired jurisdiction over his person. Settled is the rule that jurisdiction over the person of the accused is acquired upon his arrest or voluntary appearance.[19] In the case at bar, the trial court acquired jurisdiction over the person of the appellant when he was arrested on 19 March 1997. His arrest, not his arraignment, conferred on the trial court jurisdiction over his person.

Arraignment is the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him.[20] The purpose of arraignment is, thus, to

apprise the accused of the possible loss of freedom, even of his life, depending on the nature of the crime imputed to him, or at the very least to inform him of why the prosecuting arm of the State is mobilized against him.[21]

Admittedly, appellant was arraigned after the case was submitted for decision. The question is: Were appellant's rights and interests prejudiced by the fact that he was arraigned only at this stage of the proceedings?

We do not think so. Appellant's belated arraignment did not prejudice him. This procedural defect was cured when his counsel participated in the trial without raising any objection that his client had yet to be arraigned. In fact, his counsel even cross-examined the prosecution witnesses. His counsel's active participation in the hearings is a clear indication that he was fully aware of the charges against him; otherwise, his counsel would have objected and informed the court of this blunder. Moreover, no protest was made when appellant was subsequently arraigned. The parties did not question the procedure undertaken by the trial court. It is only now, after being convicted and sentenced to two death sentences, that appellant cries that his constitutional right has been violated. It is already too late to raise this procedural defect. This Court will not allow it.

In *People v. Cabale*[22] and *People v. Atienza*[23] where the same issue was raised under similar circumstances, we held that while the arraignment of appellant was conducted after the cases had been submitted for decision, the error is non-prejudicial and has been fully cured. Since appellant's rights and interests were not prejudiced by this lapse in procedure, it only follows that his constitutional right to be informed of the nature and cause of the accusation against him was not violated.

With the procedural issue resolved, we now go to the substantial issues raised by appellant.

Appellant tries to discredit private complainant by citing several circumstances that tend to create doubt as to his guilt, to wit: (1) the alleged molestations could not have been perpetrated within the confines of the small room in the "upstairs" portion of their house in the presence and within the hearing distance of the victim's brother and two sisters in September 1995, and of her mother in January 1997; (2) the failure of private complainant to immediately report the sexual attacks to her maternal relatives and to her mother upon her arrival from abroad, and the delay of more than one (1) year from the alleged offense in September 1995 and more than two (2) months from the alleged felony in January 1997 before they were reported to the police or to any barangay official, before private complainant reported the incidents, render doubtful her charges of rape; (3) private complainant's declaration in her sworn statement contradicted her testimony in court as to how she reported the incidents; (4) the alleged material inconsistencies in the testimony of private complainant; and (5) the result of the medical examination that there was no sign of violence on the person of private complainant is an indication that she was not a victim of rape.

To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[24]

After examining the testimony of the private complainant, we find no compelling reason to deviate from the findings of the trial court as affirmed by the Court of Appeals. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate properly testimonial evidence.[25] In the case at bar, there being overwhelming

evidence showing that in September 1995 and in January 2000 appellant had carnal knowledge of private complainant by means of force and intimidation, we have no reason not to apply the rule and to apply the exception.

In a clear and straightforward manner, private complainant recounted her ordeal as follows:

Prosec. Tanciongco:

Now, in this month of September 1995, while you were there at your house together with your brother and sisters, and with your father, do you recall of any unusual incident that happened to you?

Witness:

Yes, sir.

Prosec. Tanciongco:

What was that unusual incident that you remember that happened to you?

a. I was molested by my father, sir.

Atty. Danan:

Ginamit?

Court:

What do you mean be "ginamit".

a. I was raped, sir.

Atty. Danan:

Ginamit, ginahasa, rape.

Prosec. Tanciongco:

I was raped by my father.

q. When you said you were raped by your father, you are referring to the accused in this case, Alfredo Pangilinan?

Witness:

Yes, sir.

Prosec. Tanciongco:

How were you raped by your father?

a. It was night time, sir, my brother and sisters, sir, including me, sir, were already sleeping, I just felt that my father was removing my short.

q. Where were you then at the time when you felt that your father was removing your short?

a. I was in my bed, sir.

q. You said a while ago that night time, what time more or less of the night?

a. Between the hours of 9 and 10 o'clock in the evening, sir.

Prosec. Tanciongco:

We would like to make on record that the witness is crying at the time she is testifying.

Court:

Take note of that. The Court has observed that the witness is crying.

Prosec. Tanciongco:

And where were your brother and sisters at that time that your father was molesting you?

a. They were already sleeping, sir.

q. Were were your brother and sisters sleeping at that time?

a. Upstairs, sir.

q. Where were you sleeping?

a. Upstairs also, sir.

Prosec. Tanciongco:

How about your father, where was he sleeping?

a. Also upstairs, sir.

q. In relation to your father, where were you sleeping? In what part of the house were you sleeping?

Court:

Sama-sama ba kayo?

a. We were in the same room, sir.

Prosec. Tanciongco:

Now, according to you your father was removing your shorts, was he able to remove your shorts?

a. Yes, sir.

q. What else did your father do aside from removing your shorts if he did anything?

Witness:

He raised my clothes, sir.

Prosec. Tanciongco:

How about you, what were you doing at that time that he raised your clothes and removing your shorts, what were you doing then?

a. I was preventing him from doing so, but he was so strong I cannot control him.

q. After the accused, your father raised your shirt, what happened next?

a. I was fighting back sir, but both of my hands were pinned by him.

q. You mean both of your hands were pinned by your father?

a. Yes, sir.

q. And then what happened to you?

Witness:

Sumigaw po ako. "Inang, inang tulungan po ninyo ako inaasawa po ako ng papa ko." (I was shouting. "Inang, inang tulungan po ninyo ako, inaasawa po ako ng Papa ko.")

x x x x

Witness:

Hindi pa rin niya po ako tinitigilan, tapos po sumisikad na po ako, hindi pa rin po siya umaalis. Tapos po hinahalikan niya ang suso ko.

Court:

You translate it first.

Court Interpreter:

He still continued with what he was doing, I am kicking him, but he is (sic) continue to kiss my breast, sir.

Prosec. Tanciongco:

What else did the accused do if any, aside from kissing your breast?

a. He followed my vagina, sir.

Court:

What do you mean by that?

Prosec. Tanciongco:

What do you mean by that when you said, he followed your vagina?

Witness:

He placed himself on top of me, sir.

q. What happened when he was on top of you?

a. Tapos po kumikinyud po siya sa akin. (He was pumping, sir.)

q. How long was he pumping if you know?

a. Less than five (5) minutes, sir.

q. Now, after he was pumping, what happened next?

a. Hindi niya makuha ang gusto niya. Umalis na po siya. (He was not able to succeed of what he wanted to do, so he left)

Court:

What do you mean?

Prosec. Tanciongco?

Why?

Witness:

Because I was fighting back, sir.

q. Was he able to insert his penis into your vagina?

a. He was forcing to insert it, sir.

q. But he was not able to completely insert his penis?

x x x x

Court:

Yes, that is the question. And the answer is, Yes, sir.

Prosec. Tanciongco:

Now, after that, what happened?

a. The following evening, sir, the same thing was also repeated by my father. He repeated what he had done to me.

q. When you said the same thing was repeated what do you mean?

Witness:

He repeated what he had done on the first night.

Prosec. Tanciongco:

Can you tell this Honorable Court, what was that same thing that was done to you again by your father?

a. He removed my pants and panty and raised my clothes, sir.

q. What were you doing then at the time your father was doing that?

a. I was shouting and struggling, sir, because my father was very heavy.

q. What time more or less of the night was that done by your father?

a. Between ten (10) to eleven (11), sir.

q. Where were your brother and sisters at that time while your father was doing that to you?

a. There were sleeping during that time, sir.

Prosec. Tanciongco:

And your father was the only person awake at that time?

a. Yes, sir.

q. Now, after that he raised your skirt and removed your shorts and panty, what happened next?

a. I was shouting sir, but he was covering my mouth, sir.

q. Covering your mouth?

a. Yes, sir.

q. After that what happened next?

a. He was kissing my breast, sir, then he placed himself on top of me, sir.

Prosec. Tanciongco:

How about you, when he placed himself on top of you, what were you doing?

a. I was kicking my feet, sir.

q. After he was on top of you, can you tell us what was he doing when he was on top of you?

a. He was pumping, sir.

q. While he was pumping, what happened?

a. He was able to take my virginity, sir.

Court:

What do you mean by, he was able to take your virginity?

a. He was able to completely penetrate his penis inside my vagina, sir.

Prosec. Tanciongco:

How about you when you feel that he was able to completely penetrate his penis inside your vagina, what is your reaction? How do you feel?

Witness:

It's painful, sir.

Prosec. Tanciongco:

What did you do?

a. After his penetration a thick fluid came out from his penis.[26]

question:

Now, while you were there at your house in the month of January 1997, by the way in the first week of January to be specific, Your Honor, do you recall of any incident that happened to you?

Witness:

Yes, sir.

question:

Will you please tell that before this Honorable Court?

answer:

I was raped by my father, sir.

Prosec. Tanciongco:

You are referring to the accused Alfredo Pangilinan, in this case?

Witness:

Yes, sir.

question:

Where were you raped by your father?

answer:

In our house, sir.

question:

In what portion of your house were you raped by your father?

answer:

Upstairs, sir.

question:

What time more or less were you raped by your father?

answer:

Between the hours of ten (10) to eleven (11) o'clock in the evening, sir.

Prosec. Tanciongco:

In the evening or in the morning?

answer:

In the evening, sir.

question:

Can you tell this Honorable Court, how were you [raped] by your father?

answer:

I was sleeping then and suddenly I felt my father was removing my clothes including my short and panty and he was raising my shirt, sir. And then, I felt he was on top of me.

question:

By the way, what was your father wearing at that time?

answer:

He was wearing shorts, sir.

Prosec. Tanciongco:

At that time that he was on top of you, was he wearing anything?

answer:

No more, sir.

question:

Now, at the time he was removing your panty, raised your shirt, what did you do?

answer:

I was fighting back, sir. I was kicking and pushing him, but he was so heavy so I can't push him, sir.

question:

When you stated that he was on top of you, what happened when he was on top of you?

Witness:

He was pumping, sir.

Prosec. Tanciongco:

While he was pumping, what were you doing at that time?

answer:

I was pushing him sir, but he was so heavy, I was not able to push him.

Prosec. Tanciongco:

I would like to make of record that the witness is crying while testifying.

Court:

Make that on record.

Prosec. Tanciongco:

Now, while he was pumping and you were trying to push him and failed to do so, what happened next?

Witness:

Something sticky came out from him, sir. And then, he stopped.[27]

This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.[28] Youth and immaturity are generally badges of truth.[29] It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true.[30] A rape victim's testimony against her parent is entitled to great weight since Filipino children have a natural reverence and respect for their elders. These values are so deeply ingrained in Filipino families and it is unthinkable for a daughter to brazenly concoct a story of rape against her, if such were not true.[31] Her credibility was bolstered beyond reproach by her spontaneous emotional breakdown during trial.[32]

In this case, considering that the victim was of tender age, has undergone a harrowing experience, and has exposed herself to the rigors of public trial, we find it very unlikely that she would impute so grave a crime to her father.

Appellant's contention that it is impossible for him to have consummated the rapes in the "upstairs room" without her brother and two sisters becoming aware thereof is untenable.

It has been oft said that lust is no respecter of time or place. Neither the crampedness of the room, nor the presence of other people therein, nor the high risk of being caught, has been held sufficient and effective obstacle to deter the commission of rape.[33] There have been too many instances when rape was committed under circumstances as indiscreet and audacious as a room full of family members sleeping side by side.[34] There is no rule that a

woman can only be raped in seclusion.[35] As testified to by the private complainant, her brother and two sisters were sleeping soundly and were not awakened by the commotion[36] She further said that when the rape was perpetrated on 5 January 1997, her mother was in the sala downstairs sleeping while her father proceeded upstairs to commit the dastardly act on her.[37] With her brother and sisters sleeping soundly, and her mother sleeping downstairs (during the rape committed on 5 January 1997), appellant had all the opportunity to carry out, which he did, his dissolute plan.

Appellant's argument that the delay of more than one (1) year from September 1995 and more than two (2) months from January 1997 before reporting the sexual attacks to her maternal relatives, mother or to the authorities is a clear indication that the claimed sexual assaults never happened does not persuade.

The delay and initial reluctance of a rape victim to make public the assault on her virtue is neither unknown nor uncommon. Particularly in incestuous rape, this Court has consistently held that delay in reporting the offense is not indicative of a fabricated charge.[38] It has been repeatedly held that the delay in reporting a rape incident due to death threats cannot be taken against the victim.[39] The fact of delay does not necessarily lead to an acquittal. In several cases we have decided,[40] the delay lasted for two years or more; nevertheless, the victims were found to be credible. The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained.

Private complainant was only 10 years old when she was sexually molested by her father in September 1995 and 11 years old when her father satisfied his bestial desire in January 1997. Private complainant explained to the satisfaction of the Court why she did not immediately report the matter to anybody. She disclosed that she is afraid of her father and that the latter threatened to kill her and her siblings if she would report the matter. Though she told her eight-year old brother of her ordeal, her brother likewise did not report to the authorities because he was also afraid of his father. [41] She added that she really wanted to tell her mother after she arrived from abroad but every time she went near her mother, her father kept staring at her. Exercising moral ascendancy and influence over his children, appellant clearly instilled fear in them, causing them not to go to the authorities. Her unwillingness to report which caused the delay does not diminish her credibility or weaken the charge of rape.

Appellant further attacks private complainant's credibility because the latter's declaration in her sworn statement as to how she reported the incidents contradicted her testimony in court. In her sworn statement,[42] it was stated that she reported the rapes to her mother in January 1997, but in her testimony in court, she said that she reported the matter on 16 March 1997.

Settled is the rule that affidavits, being taken ex parte, are almost always incomplete and often inaccurate for lack of searching inquiries by the investigating officer or due to partial suggestions, and are thus generally considered to be inferior to the testimony given in open court.[43] In the instant case, the said contradiction between private complainant's sworn statement and her statement in court was fully explained by her. She made it clear in court that this portion of her sworn statement was wrong and what was correct was her declaration in court. She explained in court that she informed the investigator about the mistake in her sworn statement but the latter told her to just sign it and that he will change this portion. However, the investigator never corrected the same.[44] Having fully explained the discrepancy, her credibility has not been impaired.

Appellant ascribes to private complainant several alleged material inconsistencies that affect the veracity of private complainant's testimony. These are: (1) whether the rapes were committed inside or outside the room in the "upstairs" portion of their house; (2) whether private complainant was able to shout or utter the words "Inang, inang tulungan po ninyo ako inaasawa po ako ng papa ko"; (3) whether the sticky fluid coming out of her father's penis was ejected inside or outside her vagina; and (4) whether it was private complainant or her grandmother who told Dr. Melinda Layug that she was abused.

These inconsistencies refer to minor and collateral matters. Inconsistencies in the testimony of the witness with regard to minor or collateral matters do not diminish the value of his testimony in terms of truthfulness or weight. The gravamen of the felony is the carnal knowledge by the appellant of the private complainant under any of the circumstances provided in Article 335 of the Revised Penal Code, as amended. Where the inconsistency is not an essential element of the crime, such inconsistency is insignificant and cannot have any bearing on the essential fact testified to.[45] In fact, these inconsistencies bolster the credibility of the witness's testimony as they erase the suspicion of the witness having been coached or rehearsed.[46] It is when the testimony appears totally flawless that a court might have some misgiving on its veracity. This is especially true in rape cases where victims are not expected to have a total recall of the incident.[47]

Appellant tries to utilize the first and second inconsistencies in order to show that the rapes could not have happened in a room in the presence and within hearing distance of other people. As discussed above, a rape can be committed inside a house where there are other occupants, and even in the same room where there are other members of the family who are sleeping. More importantly, what is clear from the evidence adduced is the fact that, regardless of whether private complainant was able to shout or not, appellant was shown to have carnal knowledge of private complainant in the room located in the "upstairs" portion of their house.

On the third inconsistency, appellant makes a big fuss as to where appellant's sperm was ejected. Whether the sperm was ejected inside or outside the vagina of private complainant is of no moment. It is clear from the testimony of private complainant that appellant already consummated the crime of rape when the latter tried to insert his sexual organ into her vagina during the first time that he molested her because his penis already touched her hymen.[48] It is a settled rule that for rape to be consummated, the hymen of the private complainant need not be penetrated or ruptured. It is enough that the penis reaches the pudendum, or at the very least, the labia. The briefest of contacts under circumstances of force, intimidation or unconsciousness, even without laceration of the hymen, is deemed to be rape in our jurisprudence. The mere introduction of the penis into the aperture of the female organ, thereby touching the labia of the pudendum, already consummates the crime of rape.[49]

As to the last inconsistency regarding the person who informed Dr. Melinda Layug that private complainant had been abused, we find this to be very trivial as to affect her credibility.

To support his claim that private complainant was not a victim of rape, appellant uses the answer elicited from Dr. Layug that she had not observed any physical violence or force perpetrated on the body of private complainant, specifically on the area surrounding the private organ.

This is not sufficient to exonerate him. The trial court addressed this issue in this wise:

As to the absence of violence, accused pointed out that the physical examination revealed that there were no signs of violence. This is understandable since the offense took place in September 1995 and January 5, 1997 while the physical examination was conducted on March 17, 1997 or almost two (2) years and two (2) months, respectively. Whatever signs of physical violence or wounds/injuries there may be at the time of the commission of the offense the same had healed in time.[50]

Though there were no longer physical manifestations of violence outside the sexual organ of private complainant, there was, however, an indication that the vagina had been injured.[51] The medical certificate issued[52] by Dr. Layug contains, among other things, a finding that reads "Internal Examination revealed non-parous introitus with old healed hymenal laceration at 4 o'clock position." The finding that the victim had a healed laceration at 4 o'clock position on her hymen substantiates her claim that appellant had sexual intercourse with her. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration.[53] And when the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a

conclusion that the essential requisites of carnal knowledge have been established.[54]

Against a deluge of damning evidence from the prosecution, appellant merely raises the defense of denial. He denies sexually molesting her daughter. He even claimed that private complainant seduced him and wanted to have sex with him, but he refused.

His defense, unsubstantiated and uncorroborated, must certainly fail. Mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim.[55] Denial is intrinsically weak, being a negative and self-serving assertion.[56] The trial court had this to say:

It is unbelievable for a ten (10)-year old girl to be as malicious as accused described the offended party. At age ten (10), girls still play games that children normally play, but definitely not sex. If indeed accused had good relationship with the offended party, he would not destroy the reputation or character of his daughter just to save himself from punishment of his immoral and bestial act. Following his line of defense, offended party would not file charges against the accused had the latter treated her well, respected her as a child and cared for her like a precious jewel. Had the offended party enjoyed this treatment and did not suffer in his hands, the former would not have any reason nor have a heart to file charges against the (latter). x x x.[57]

Moreover, appellant's statement that he does not know of any reason why his daughter filed the rape charges[58] further bolstered the credibility of private complainant. When there is no evidence to show any improper motive on the part of the rape victim to testify falsely against the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence.[59]

Since the felonies were committed in September 1995 and in January 1997, the provisions of Republic Act No. 7659,[60] which was the law in effect on the day when the rapes were committed, shall apply.

The gravamen of the offense of rape is sexual congress with a woman by force and without consent. If the woman is under 12 years of age, proof of force is not an element of statutory rape, but the absence of a free consent is presumed. Conviction will therefore lie, provided sexual intercourse is proven. But if the woman is 12 years of age or over at the time she was violated, sexual intercourse must be proven and also that it was done through force, violence, intimidation or threat.[61]

As provided for in the Revised Penal Code,[62] sexual intercourse with a girl below 12 years old is statutory rape. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age. Sexual congress with a girl under 12 years old is always rape.[63]

In the present case, appellant was charged with two counts of statutory rape. The first element was proved by the testimony of the victim herself, while the second element was established by appellant's admission and the presentation of private complainant's Certificate of Live Birth[64] showing that she was born on 9 May 1985. When the crimes were committed in September 1995 and in January 1997, private complainant was not yet 12 years old.

For one to be convicted of qualified rape, at least one of the attendant circumstances mentioned in Article 335[65] must be alleged in the information and duly proved during the trial.[66] In the instant case, since the attendant circumstances of the victim's minority and her relationship with the offender have been properly alleged in the informations and established during trial, the trial court's imposition of the penalty of death on appellant is justified.

With the effectivity,[67] however, of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been prohibited. Pursuant to

Section 2 thereof, the penalty to be meted on appellant shall be reclusion perpetua. Said section reads:

SECTION 2. In lieu of the death penalty, the following shall be imposed:

- (a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
- (b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of said law which provides:

SECTION 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

As regards the award of damages, the same must be modified. The P50,000.00 awarded by the trial court as civil indemnity was correctly increased by the Court of Appeals to P75,000.00 which is the amount awarded if the crime is qualified by circumstances which warrant the imposition of the death penalty.[68] With respect to the award of moral damages, the P50,000.00 awarded by the Court of Appeals should be increased to P75,000.00 without need of pleading or proof of basis thereof.[69] In addition, the amount of P25,000.00 awarded by the Court of Appeals as exemplary damages was proper due to the presence of the qualifying circumstances of minority and relationship.[70]

WHEREFORE, all the foregoing considered, the decision of the Court of Appeals dated 16 November 2005 finding appellant Alfredo Pangilinan y Trinidad guilty beyond reasonable doubt of two counts of qualified rape is **AFFIRMED** with the **MODIFICATION** that each penalty of death imposed on appellant is reduced to reclusion perpetua without eligibility for parole pursuant to Republic Act No. 9346. He is also ordered to pay private complainant AAA, for each count of rape, the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages. Costs against appellant.

SO ORDERED.

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

[1] Penned by Associate Justice Arturo G. Tayag with Associate Justices Jose L. Sabio, Jr. and Jose C. Mendoza, concurring; rollo, pp. 189-209.

[2] Records, Vol.1, pp. 117-133.

[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with that of her immediate family members, are withheld and fictitious initials instead are used to represent her, both to protect her privacy. *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006.

[4] Records, Vol. 1, p. 1.

[5] Records, Vol. 2, p. 1.

- [6] Records, Vol. 1, p. 9.
- [7] Rollo, pp. 191-193.
- [8] Id. at 39-49.
- [9] Id. at 52-53.
- [10] Id. at 82.
- [11] Id. at 115.
- [12] Id. at 133.
- [13] Id.
- [14] Id. at 134.
- [15] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [16] Rollo, p. 186.
- [17] Id. at 22.
- [18] Id. at 1.
- [19] *Miranda v. Tuliao*, G.R. No. 158763, March 31, 2006, 486 SCRA 377, 389; *Alva v. Court of Appeals*, G.R. No. 157331, April 12, 2006, 487 SCRA 146, 169.
- [20] Section 14 (2), Article III, 1987 Philippine Constitution.
- [21] *People v. Monteron*, 428 Phil. 401, 406 (2002).
- [22] G.R. Nos. 73249-50, 8 May 1990, 185 SCRA 140, 145-146.
- [23] 86 Phil. 576, 579-580 (1950).
- [24] *People v. Bascugin*, G.R. No. 144195, 25 May 2004, 429 SCRA 140, 146.
- [25] *People v. Escultor*, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.
- [26] TSN, 15 May 1997, pp. 11-29.
- [27] TSN, 4 June 1997, pp. 11-16.
- [28] *People v. Villafuerte*, G.R. No. 146854, 28 April 2004, 428 SCRA 427, 433.
- [29] *People v. Espinosa*, G.R. No. 138742, 15 June 2004, 432 SCRA 86, 99.
- [30] *People v. Andales*, G.R. Nos. 152624-25, 5 February 2004, 422 SCRA 253, 265.
- [31] *People v. Mangitngit*, G.R. No. 171270, 20 September 2006.
- [32] TSN, 15 May 1997, p. 14; 4 June 1997, p. 15; *People v. Marcellana*, 426 Phil. 739, 749 (2002).
- [33] *People v. Layugan*, G.R. Nos. 130493-98, 28 April 2004, 428 SCRA 98, 114.
- [34] *People v. Manahan*, 455 Phil. 658, 672-673 (2003).
- [35] *People v. Tonyacao* G.R. Nos. 134531-32, 7 July 2004, 433 SCRA 513, 530.

- [36] TSN, 24 September 1997, pp. 8-11, 18; 15 May 1997, p. 30.
- [37] TSN, 24 September 1997, p. 33.
- [38] *People v. Silvano*, 368 Phil. 676, 705 (1999).
- [39] *People v. Lucas*, G.R. No. 80102, 22 January 1990, 181 SCRA 316, 325.
- [40] *People v. Dimaano*, G.R. No. 168168, 14 September 2005, 469 SCRA 647, 663; *People v. Salvador*, 444 Phil. 325, 332 (2003).
- [41] TSN, 15 May 1997, p. 42.
- [42] Exhibit C; Records, p. 46.
- [43] *People v. Sara*, 463 Phil. 94, 109-110 (2003).
- [44] TSN, 4 June 1997, pp. 45-48.
- [45] *People v. Sabardan*, G.R. No. 132135, 21 May 2004, 429 SCRA 9, 19.
- [46] *People v. Murillo*, G.R. Nos. 128851-56, 19 February 2001, 352 SCRA 105, 118.
- [47] *People v. Albior*, G.R. No. 115079, 19 February 2001, 352 SCRA 35, 46.
- [48] TSN, 15 May 1997, pp. 19-25.
- [49] *People v. Arango*, G.R. No. 168442, 30 August 2006.
- [50] Records, Vol. 1. pp. 130-131.
- [51] TSN, 22 October 1997, pp. 13-14.
- [52] Records, Vol. 1, p. 45.
- [53] *People v. Limio*, G.R. Nos. 148804-06, 27 May 2004, 429 SCRA 597, 610.
- [54] *Id.* at 611.
- [55] *People v. Esperas*, G.R. No. 128109, 19 November 2003, 416 SCRA 216, 225-226.
- [56] *People v. Agsaoay, Jr.*, G.R. Nos. 132125-26, 3 June 2004, 430 SCRA 450.
- [57] Records, Vol. 1, p. 130.
- [58] TSN, 11 November 1998, pp. 22-23.
- [59] *People v. Malabago*, G.R. No. 108613, 18 April 1997, 271 SCRA 464; *People v. Gagto*, G.R. No. 113345, 9 February 1996, 253 SCRA 455.
- [60] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES. R.A. 7659 took effect on 31 December 1993. Republic Act No. 8353, otherwise known as The Anti-Rape Law of 1997, took effect on 22 October 1997. Even if we are to apply the provision of R.A. 8353, the proper penalty to be imposed is still death.
- [61] *People v. Dimaano*, G.R. No. 168168, 14 September 2005, 469 SCRA 647, 665.
- [62] Art. 335. Rape; When and How Committed. - Rape is committed:

x x x x

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

[63] People v. Jusayan, G.R. No. 149785, 28 April 2004, 428 SCRA 228, 234-235.

[64] Records, Vol. 1, p. 44.

[65] Art. 335. When and How Committed. - Rape is committed:

x x x x

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.

x x x x

[66] People v. Caliso, 439 Phil. 492, 507-508 (2002).

[67] Republic Act No. 9346 took effect immediately after its publication in two newspapers of general circulation, namely Malaya and Manila Times on 29 June 2006 in accordance with Section 5 thereof.

[68] People v. Barcena, G.R. No. 168737, 16 February 2006, 482 SCRA 543, 561.

[69] People v. Alfaro, 458 Phil. 942, 963 (2003).

[70] People v. Arsayo, G.R. No. 166546, 26 September 2006.

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