

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AC-MAD PANDAPATAN Y DIMALAPANG, ACCUSED-APPELLANT.

G.R. NO. 173050. April 13, 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. 01654 dated 22 February 2006 which affirmed the Decision[2] of the Regional Trial Court (RTC) of Pasig City, Branch 261, in Criminal Cases No. 120008-H, 120306-H to 120392-H, dated 14 November 2003, finding accused-appellant Ac-Mad Mandapatan y Dimalapang guilty of qualified rape.

The accused-appellant was charged with eighty-eight counts of rape in eighty-eight separate Informations. Except for the dates of the alleged commission of the crimes, the eighty-eight Informations read alike:

The Prosecution, through the undersigned Public Prosecutor, charges Ac-Mad Pandapatan y Dimalapang with the crime of rape under RA 8353 in relation to RA 7610 (SC A.M. 99-1-13), committed as follows:

On or about [date], in Taguig, Metro Manila, and within the jurisdiction of this Honorable Court, the accused, being the father of complainant [AAA], who is a minor, 15 years old, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have [sic] sexual intercourse with [AAA], against her will and consent.[3]

Upon arraignment, accused pleaded NOT GUILTY to the crimes charged. Thereafter, trial on the merits ensued. The evidence of the prosecution and the defense, as summarized by the trial court, are as follows:

Dr. Mary Ann Gajardo testified that on January 17, 2001, by reason of a letter-request from the Department of Interior and Local Government (DILG), she examined the complainant, [AAA], at the Medico-Legal, Camp Crame, and her findings therefrom were reduced into writing per Medico Legal Report No. M-0195-02 (Exhibits "A" to "A-1"), to wit:

Findings:

Hymen: fleshy, elastic type hymen with presence of shallow healed laceration at 9 o'clock position.

Conclusion:

Physical findings on the genitalia are indicative of penetration.

There are no external signs of application of any form of physical trauma.

She further declared that if the incident took place on January 15, 2001, it was possible that her findings would be "fresh healed" and not "shallow healed", indicating that the incident might have happened within weeks or months before the examination (TSN, p. 16, 6/15/01). On cross, she testified that it was possible that the injury was caused not by penetration but was due to strenuous activity of the victim or masturbation.

Private complainant, [AAA], on direct examination, testified that the accused, Acmad Pandapatan, is her father

and that she was born on November 5, 1985 (Exhibits "B" to "B-1"). She declared that in September 2000, she, together with her mother, [BBB], father-accused, Acmad, and younger brother, [CCC], were staying in Bagongbayan, Taguig. She was then in her third year high school and her classes started from 12:00 in the afternoon and ended at 6:00 in the evening. Her mother, BBB, who was a sewer, usually left their house at 6:00 in the morning and went back home at around 7:30 in the evening, while her father-accused, Acmad, who was selling pirated VHS tapes, did not have a regular time of work.

Sometime in the second week of September, 2000, at around seven o'clock in the morning, she was awakened from her sleep when Acmad held her arms, told her not to make a noise and ordered her to stand up and remove her clothes, while pointing a knife at her. When she asked why, Acmad said "huwag maraming daldal". She stood up, removed her t-shirt, shorts and underwear and was made to lie down naked.

While she was lying down, Acmad undressed himself and laid on top of her. Acmad kissed her body from neck to her private part, spread her legs while holding her hands and forced his penis inside her vagina. Whenever she tried to resist, Acmad would strongly hold her hands. She did not know how long Acmad stayed on top of her. She felt pain when Acmad inserted his penis into her genitalia. The knife was beside Acmad while he was raping her and he returned the same to the kitchen after the rape. Thereafter, Acmad told her not to tell her mother or anyone about what happened, otherwise he would kill her. He also said to her that he would kill her mother and her younger sibling should she tell her mother about the rape. She then proceeded to the comfort room and washed herself while her father went out of the house to buy food for breakfast. The incident happened almost everyday while her mother was at work and her brother was in school from the second week of September 2000 until January 15, 2001, except on her mother's day-off on Saturdays and holidays. In all instances, Acmad succeeded in penetrating his penis to her genitalia. In open court, she positively identified the accused to be the person who raped her.

In the evening of January 15, 2001, when Acmad told her to rent a VHS tape, she asked her mother to accompany her and it was at this time that she told her mother about the incidents. The next day she was brought by her mother to her Tita Renea in Parañaque. On January 17, 2001, she, her mother and Renea went to the office where the television program "Katapat" was broadcast. After a staff of said office called Major Yabut, they went to the DILG office in Quezon City and having narrated the incident, Major Yabut ordered the arrest of Acmad that same day. She then executed a sworn statement (Exhibits "C" to "C-2") and submitted herself to a medical examination at Camp Crame. She understood rape as "na ginamit niya po ako" and "gusto niyang mangyari yung katulad ng sex". The incident affected her personality, in that she became angry at her brother even if he had no fault and would also avoid her friends and classmates. She was angry and "nanghihiyang" because the incident destroyed her family. She wanted Acmad to be put to jail "at kung puwede ay patayin".

On cross, she declared that she learned that rape is bad at the age of 13. Her mother explained to her its meaning when she asked her after she had read in a newspaper "na iyong 6 na taong gulang na bata ay nireyp ng tatay niya". She never realized that what she had read would happen to her. Before the incident, she was close to Acmad. During the first rape, she did not shout for help because Acmad told her not to make a noise and she was not able to talk because she was very much afraid. She did not try to go to the barangay or police authorities to report the matter. Whenever she and Acmad were at home, she would avoid him and would not follow his orders. She did not try to run away from home. She tried to make ways to avoid being raped, like going to school early. In all instances of rape, she kept silent and pretended that nothing happened, until on January 15, 2001, when she could no longer hide it, she decided to tell her mother about the whole matter. Whenever she was raped on Sundays by the accused, her brother was with his friends attending mass. Acmad, who is a Muslim, would not allow her to go with her brother.

[BBB] testified that private complainant [AAA], is her daughter while accused, Acmad, is her husband. As a sewer, she would report for work six (6) days a week, Sunday to Friday, from 7:00 in the morning to 4:00 in the afternoon and would leave their house at around 6:00 in the morning and go home at around 5:00 in the afternoon. On January 15, 2001, when she and [AAA] went out of their house to rent a VHS tape, [AAA] told her that she was raped by Acmad and that the first rape took place in the second week of September and the same was repeated almost everyday, except Saturdays and holidays, until January 15, 2001. The next day, January 16, 2001, in the morning, she brought [AAA] to her mother's place at Better Living and, in the afternoon, she was able to see [AAA] at her sister's house. In the afternoon of January 17, 2001, she and [AAA] accompanied the police to arrest Acmad who was at that time playing "tong-its" at his step-brother's house. Acmad was brought to the DILG office and was identified by [AAA] as the one who molested her. [AAA] was brought to Camp Crame for medical examination. Before the incident, [AAA] was "malaming" and respectful to Acmad. After the incident, AAA became "palasagot" and "bugnutin".

On cross, she declared that she had no personal knowledge regarding the incident. When she asked [AAA] why it took her so long before she revealed the incident, [AAA] said she was afraid that Acmad might kill her and [CCC] (her younger brother).

PO3 Antonio Hernandez testified that in January 2001, he was one of the operatives of the DILG Special Task Force. On January 17, 2001, at around 11:00 in the morning, [BBB] and [AAA] went to the office of Major Yabut and, at around 9:30 in the evening, Major Yabut dispatched a team to arrest Acmad. He, PO1 Besa, and PO1 Quilang, together with [BBB] and [AAA], went to their place. After [AAA] pointed to Acmad, they approached him, introduced themselves and invited him to their office regarding the complaint of [AAA]. He identified the Joint Affidavit of Arrest he jointly executed with PO1 Quilang (Exhibits "E" to "E-3").

On cross, he declared that he had no personal knowledge regarding the rape. At the time they arrested Acmad, they had no warrant of arrest and he was then not doing any illegal act but had voluntarily submitted himself.

Renea Serad testified that in the evening of January 15, 2001, while she was at her house, [AAA] and [BBB] arrived. [AAA] told her that she was raped by Acmad. The following morning, she, [BBB] and [AAA] went to the ABS-CBN and were advised to go to the office of Major Yabut of DILG in Quezon City. She identified the accused in open court.

On cross, she declared that she had no personal knowledge with respect to the alleged rape. Her niece, [AAA], did not tell the details of the rape as she did not ask her about it.

The defense presented the accused, Acmad Pandapatan, who denied the charges.

Acmad testified that sometime in January 2001, at about 2:00 in the afternoon, while he was in his brother's house, he was arrested by policemen who told him that his case was rape. He was brought to an office in Quezon City and was made to sign a document, the contents of which he was not able to read. He had no counsel when he was investigated at the Fiscal's Office. On the dates specified in the informations, he denied having any forceful sexual intercourse with complainant, [AAA], who is his natural daughter (TSN, page 3, 4/3/03). [AAA] filed these cases against him upon instigation of [BBB] who got angry with him because his children by his first wife went to their house.

From September 2000 to January 15, 2001, he, [BBB], [CCC] and [AAA] were renting a room. He drew a sketch of the rooms of the house his family was renting (Exhibits "1" to "1-a", for the defense/Exhibits "E" to "E-1" for the prosecution) and alleged that, if [AAA] was raped, she could have shouted for help from their neighbors. He testified that he usually left their house at 5:30 a.m. Everyday. Between 8:30 and 9:30 a.m., he would start his

business of selling different items such as playing cards, bracelet and batteries. At 11:00 a.m., he would fetch his son from school and they would be home by 11:30 a.m. After eating lunch with his son, he would continue selling his wares the rest of the day.

On cross, he admitted that [AAA] is his daughter; that from September 2000 until January 15, 2001, [CCC] and [AAA] were living with him in a house, which is a studio type with no partition, located at xxxx. He claimed that [AAA] has filed these cases of rape against him upon instigation of [BBB] because of a quarrel between [BBB] and his children by his previous wife who used to go to their house. He admitted, however, that there was no serious quarrel or misunderstanding between him and [BBB]. Whenever [AAA] does something wrong, he would scold her but not inflict any serious injury on her. [AAA] would, although left in their house from 6:00 to 9:00 in the morning, sometimes go outside or to her mother's siblings.[4]

On 14 November 2003, the trial court rendered its Decision convicting the accused-appellant in Criminal Case No. 120306-H, but acquitting him in Criminal Cases No. 120008-H and 120307-H to 120392-H. The dispositive portion of the Decision reads:

WHEREFORE, in light of the foregoing, the Prosecution, having proved the guilt of the accused, Acmad Malawi Pandapatan, beyond reasonable doubt in Crim. Case No. 120306, he is hereby meted the capital punishment of DEATH.

He is likewise hereby ordered to pay the offended party, [AAA], the amount of P75,000 as civil indemnity, P50,000 as moral damages without the necessity of proving the same. An award of P25,000.00 to complainant as exemplary damages is also in order, to deter fathers with perverse behavior from sexually abusing their daughters.

Insofar as Crim. Case Nos. 120008-H, 120307-H to 120392-H are concerned, said accused is hereby ACQUITTED thereof, for insufficiency of evidence.

The Warden of the Pasig City Jail, Nagpayong, Pinagbuhatan, Pasig City is hereby directed to transfer immediately the accused to the Bureau of Corrections, New Bilibid Prisons, Muntinlupa City.[5]

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.[6] However, pursuant to our ruling in *People v. Mateo*,[7] the case was transferred to the Court of Appeals for appropriate action and disposition.[8]

On 22 February 2006, the Court of Appeals affirmed the disposition of the RTC, to wit:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appealed Decision dated November 14, 2003 of the Regional Trial Court of Pasig City, Branch 261, in Crim. Case No. 120306-H, finding the accused-appellant AC-MAD PANDAPATAN y DIMALAPANG guilty beyond reasonable doubt of rape and sentencing him to suffer the penalty of death and to pay his daughter-victim, [AAA] the amounts of P75,000.00 as civil indemnity, P50,000 as moral damages and P25,000 as exemplary damages is AFFIRMED.

Should no motion for reconsideration be filed in this case by the accused-appellant within the allowable reglementary period, or after the lapse thereof, let the entire records of this case be forwarded to the Honorable Supreme Court for appropriate action hereon.[9]

As no Motion for Reconsideration was filed with the Court of Appeals, the latter forwarded the records of the case to this Court on 10 July 2006.[10] On 18 July 2006, this Court resolved to require the parties to submit Supplemental Briefs.[11]

On 19 September 2006, this Court noted (1) the Manifestation in Lieu of Supplemental Brief dated 28 August

2006 filed by the Public Attorney's Office for the accused-appellant, stating that the accused-appellant opted not to file a supplemental brief since there were no new issues material to the case which were not elaborated upon in the Appellant's Brief and that the accused-appellant had exhaustively argued all the relevant issues in his brief; and (2) the Manifestation and Motion in Lieu of Supplemental Brief dated 29 August 2006 filed by the Office of the Solicitor General, stating, among other things, that the penalty of reclusion perpetua should be imposed instead of the penalty of death due to the enactment of Republic Act No. 9346 and that they were adopting the arguments stated in the Appellee's Brief dated 5 March 2005.[12]

In the aforementioned Appellant's Brief, the following Assignment of Errors was submitted to this Court:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[13]

Accused-appellant claims if it were true that AAA was raped almost everyday from September 2000 to January 2001, the rage and fury she felt against the accused would be so overwhelming and "enough to cause her to either divulge her ordeals to her mother or to anyone close to her immediately after experiencing several sexual assaults; to report the incident to the police if she was afraid of the death threats made by the accused to herself, her mother and her sibling; to move away from their house, or to do something to protect herself or perhaps, not allow herself to be left alone with the accused everyday." [14] Accused-appellant also points to the fact that their place "consisted of six rooms for six families, with three rooms each on both sides. Separating the three rooms from the other three was an aisle which was only 1" meters wide. The room has a window which was always kept open. At the back of the room were houses located at a distance of 1" meters only. The complainant could have easily shouted for help from the families living in the same place." [15]

The accused-appellant also emphasizes the part of the testimony of Dr. Mary Ann Gallardo that the laceration of the victim's hymen did not exceed fifty percent of its opening and that the shallow healed laceration at the 9:00 o'clock position on the victim's hymen would indicate that the rape took place more than two weeks prior to the victim's examination on 17 January 2000. According to accused-appellant, this is contrary (1) to the allegation of the prosecution that he committed eighty-eight counts of rape, and (2) to the testimony of AAA that the last sexual assault happened on 15 January 2001.[16] The accused-appellant also stresses Dr. Gallardo's statement on cross that it was possible that the cause of the penetration could be strenuous activity or by the victim's own finger.[17]

Finally, the accused-appellant reminds this Court that the date of the first Information charging him for rape was "on or about the second week of September," while there was an exact date for the other 87 alleged rape incidents. According to the accused-appellant, it is highly doubtful that the private complainant failed to remember the date of the first sexual assault while she remembered the exact dates of the other eighty-seven alleged rape incidents considering that what she allegedly went through was horrifying, traumatic and painful.[18]

We are not persuaded. Delay in reporting the rape incidents, especially in the face of threats of physical violence, cannot be taken against the victim, more so when the lecherous attacker is her own father. Strong apprehensions brought about by fear, stress, or anxiety can easily put the offended party to doubt or even distrust what should otherwise be a positive attitude of bringing the culprit to justice. The Court has thus considered justified the filing

of complaints for rape months, even years, after the commission of the offense.[19]

In a long line of cases, this Court has held that delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim.[20] A rape victim's actions are oftentimes overwhelmed by fear rather than by reason. It is this fear, springing from the initial rape that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, will numb his victim into silence and submissiveness. Incestuous rape magnifies this terror, because the perpetrator is a person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and the degree of fear.[21]

In the case at bar, AAA indeed failed to immediately inform her mother of the sexual assaults she suffered from her father. However, that it took her four months before she finally mustered courage to disclose her ordeal is not inconsistent with ordinary human experience. The prosecution had established that the accused-appellant had threatened to kill AAA, her mother and her brother should she tell anyone of what happened. On direct examination, AAA declared:

Q:

Why did you not tell your mother about these incidents on the second week of September?

A:

Natakot po ako.

Q:

You were afraid of what?

A:

Binantaan po niya ako.

Q:

What was the threat all about?

A: Na papatayin po niya ang Mama ko at kapatid po.[22]

As regards the proximity of the adjoining rooms to the place of the alleged commission of the offense, this Court has consistently ruled that rape can be committed even in places where people congregate — in parks, within school premises, inside a house where there are other occupants, and even in the same room where other family members are sleeping.[23] Lust is no respecter of time, place or kinship.[24] In contrast, there is no rule that rape can be committed only in seclusion.[25]

Accused-appellant's theory — that the extent of the laceration on AAA's hymen is inconsistent with her assertion of repeated rape — may well be a defense against the charges of rape subsequent to that which occurred on the second week of September 2000. Accused-appellant, however, has already been acquitted of such charges. The only conviction which is the subject of this review is that which allegedly occurred on the second week of September, the probability of which was not diminished, and was even supported, by the shallow healed laceration testified to by Dr. Gallardo.

The fact that the laceration of the hymen did not exceed fifty percent of its opening does not negate the fact of rape, either. In *People v. Echegaray*,[26] we held, citing *People v. Melivo*,[27] that

The vaginal wall and the hymenal membrane are elastic organs capable of varying degrees of distensibility. The degree of distensibility of the female reproductive organ is normally limited only by the character and size of the pelvic inlet, other factors being minor. The female reproductive canal being capable of allowing passage of a regular fetus, there ought to be no difficulty allowing the entry of objects of much lesser size, including the male reproductive organ, which, even in its largest dimensions, would still be considerably smaller than the full-term fetus.

Dr. Gallardo further explained that the circumference of the hymen varies for different women and depending on the circumstances at the time of the examination:

Q:

What is the normal size of the circumference of a hymen?

A:

It depends ... it varies from 0.5 cm to 1 cm (the hymenal opening), ma'am.

Q:

So, if a person is on a non-virginal state the hymenal opening would be much much big? [sic]

A:

The hymenal opening is not conclusive... if the person is relax (sic) the hymenal opening is bigger, ma'am.

Q:

In this particular case of the victim when you examined the victim... was she relaxed? Was she under pressure?

A: She's relaxed, ma'am.[28]

Also, the extent of the laceration on the hymen depends on the force applied when the vagina was penetrated:

Prosecutor Reyes:

So, would you say that if the same person did the same to the victim, the same measurement of the organ that will penetrate the genitalia of the victim? (sic) Would you have the same findings? For example I'm a victim of this successive sexual abuse with only one (1) man with the same size of penis would penetrate my genitalia would I have the same injury from the start up to the last act?

A:

No, ma'am. It varies.

Q:

What would cause the variation of the injury?

A:

It depends upon the force. There are other factors wherein the hymen is lacerated, ma'am.[29]

At any rate, laceration of the victim's hymen is not an element of the crime of rape. In rape cases, what is material is that there was penetration of the female organ.[30]

As regards the allegation regarding AAA's failure to remember the exact date of the first rape, we have already held that rape victims are not expected to mechanically keep tab and give an accurate account of the exact dates of

the rape. It is not farfetched for a victim of a harrowing and traumatic encounter to even shut off certain portions of that experience.[31] Behavioral psychology also teaches us that different people react dissimilarly to similar situations. [32] Verily, the exact date of rape is not an essential element of the crime, and the mere failure to give a precise date, let alone an incorrect estimate, will not discredit the testimony of the victim.[33]

Thus, after a careful review of the records of this case, we entertain no doubt that AAA was indeed raped by her biological father in the second week of September 2000. There is absolutely no reason for the prosecution witnesses, particularly AAA and BBB, to lie. Accused-appellant indeed claims that AAA had filed these cases of rape against him upon instigation of BBB because of a quarrel between BBB and his children by his previous wife who used to go to their house. However, he also admitted that there was no serious quarrel or misunderstanding between him and BBB. On the other hand, AAA's testimony, which was corroborated by Dr. Gallardo's medical findings, was straightforward, candid and convincing:

Q:

Miss witness, let's go back to the incident of rape which you have said, second week of September 2000, will you please narrate to us in brief how this rape actually happened?

A:

Bale po umaga iyon, natutulog po ako at may humawak sa braso ko at nagising ako at may nakatutok na kutsilyo.

Q:

Will you please tell us if you know, who was this person who actually held your arm and poked the knife at you?

A:

Yes, ma'am.

Q:

Who was this person?

A:

My father, ma'am.

Q:

You are referring to the accused in this particular case?

A:

Yes, ma'am.

Q: By the way, will you please stand up and look around the courtroom and tell us if your father Acmad Pandapatan is inside this courtroom?

A: Yes, ma'am, he is here.

Q: Can you point to him?

A: That man, ma'am.

"INTERPRETER:

"Witness pointing to a person inside the courtroom wearing a yellow t-shirt and a maong pants, who upon being asked answered by the name Acmad Pandapatan.

"FISCAL TAMANG:

"And then you said you woke up with the knife pointed at you, will you please tell us what happened after that?

A: He told me not to make a noise, ma'am.

Q: And then?

A: He told me to stand up and he told me to remove my dress, ma'am.

Q: And then what did you tell him when he told you to remove your dress?

A: I asked him bakit po.

Q: And then what was the response of your father?

A: And then he told me huwag maraming daldal.

Q: You said you were standing at that time and undressed, what was the position of your father?

A: Nakatayo rin po.

Q: Did you undress when your father told you to do so?

A: Damit lang po, pero sabi niya lahat po.

Q: What were you wearing at that time?

A: T-shirt and shorts po.

Q: And then when you said you were undressed, you removed your T-shirt and shorts?

A: Yes, ma'am.

Q: Were you wearing underwear?

A: Yes, ma'am.

Q: How about your panty or your underwear, did you remove them also?

A: Yes, ma'am.

Q: And then after you undressed, what happened next?

A: I was made to lie down.

Q: Did you lie down?

A: Yes, ma'am.

Q: And then what happened after you lie down?

A: Siya naman po ang naghubad.

Q: While he was undressing, what were you doing?

A: Nakahiga lang po ako at nakatagilid.

Q: Naked?

A: Yes, ma'am.

Q: And then when you said your father undressed himself, you mean to say all, including his trousers and shorts?

A: Yes, ma'am.

Q: Was he wearing an underwear at that time?

A: Yes, ma'am.

Q: Did he remove his underwear, also?

A: Yes, ma'am.

Q: So he was totally naked at that time?

A: Yes, ma'am.

Q: Tell us when you were already lying down and your father was already undressed, what happened next?

A: Dumapa po siya sa akin.

Q: What was your position when he lay flat on you?

A: Nakatihaya po.

Q: And then what happened after you said he lay on top of you?

A: Hinalikan niya po iyong katawan ko, iyong harapan ko hanggang baba.

Q: And then what were you doing while your father was kissing you?

A: I was crying ma'am.

Q: Up to what part of your body did your father kiss you?

A: Hanggang dito po.

Q: From where?

A: Hanggang leeg, hanggang sa ari ko.

Q: Then what did you do, while this was going on?

A: Umiiyak po at ang sabi ko, huwag po.

Q: What was the reaction, if any, of your father?

A: Ang sabi po niya, manahimik ka.

Q: And then after that, did anything happen?

A: Yes, ma'am, tapos po iyong hita ko ibinukaka niya.

Q: Then what happened when he tried to spread your legs?

A: Hinawakan po niya iyong dalawa kong kamay at ipinipilit niyang ipasok iyong ari niya.

Q: Will you please tell us how your father held your hands?

A: Iyong dalawa niyang kamay nakaharap sa akin.

Q: You said your father tried to insert his penis into your vagina, did he succeed in penetrating his penis?

A: Yes, ma'am.

Q: Did you offer any resistance while he did that to you?

A: Yes, ma'am.

Q: What kind of resistance did you offer?

A: Lumalaban po ako sa kanya.

Q: What did your father do while you were resisting?

A: Lalo niyang hinigpitan ang pagkakahawak sa akin.

Q: How long did your father stay atop you?

A: I do not know, ma'am.

Q: What did you feel when your father actually inserted his penis on your genitalia?

A: Masakit po.

Q: And then after that, what happened?

A: Pagkatapos po niyang magparaos sa akin, sabi po niya sa akin huwag daw po akong magsusumbong sa mama ko o kaninuman dahil papatayin daw po niya ako.

Q: And then what did you do, after he told you that?

A: Sabi po niya magbihis ka na.

Q: Did you dress up?

A: Nagpunta po ako sa C.R.

Q: What did you do inside the C.R.?

A: Nagbanlaw po.

Q: After that, what did your father do?

A: Lumabas po siya, para bumili ng almusal.

Q: You mentioned that your father poked a knife at you while you were sleeping and you woke up, what happened to the knife now, while the rape was going on?

A: Ibinalik po niya sa kusina.

Q: Why? Where was the knife when he raped you?

A: Nandoon po sa tabi niya.[34]

Time and again, we have consistently held that no young girl would concoct a sordid tale of so serious a crime at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice.[35] 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.[36]

Furthermore, the trial court's assessment of the facts 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. 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 testimonial evidence properly.[37]

For there to be qualified rape, at least one of the attendant circumstances mentioned in Article 335[38] must be alleged in the information and duly proved during the trial.[39] 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 information and established during trial, the trial court's imposition of the penalty of death on appellant would have been justified.

However, while the above discussion on qualified rape is still relevant as regards the civil liability of the accused-appellant, Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines,"[40] has prohibited the imposition of the supreme penalty of death. Pursuant, therefore, 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 accused-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.

With regard to the award of damages, the same must be modified. The P75,000.00 awarded by lower courts as civil indemnity is correct, as the same is the amount awarded if the crime is qualified by circumstances which warrant the imposition of the death penalty.[41] 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.[42] However, 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.[43]

WHEREFORE, the Decision of the Court of Appeals dated 22 February 2006 finding accused-appellant Ac-mad Pandapatan y Dimalapang guilty beyond reasonable doubt of rape is AFFIRMED with the MODIFICATION that the penalty of death imposed on accused-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 the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages. No costs.

SO ORDERED.

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

Nachura, J., no part. Signed pleading as Sol Gen.

[1] Penned by Associate Justice Renato C. Dacudao with Associate Justices Hakim S. Abdulwahid and Celia C. Librea-Leagogo, concurring. Rollo, pp. 3-20

[2] CA rollo, pp. 68-78.

[3] Records, pp. 18-189.

[4] Id. at 414-418.

[5] Id. at 423.

[6] CA rollo, p. 1.

[7] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[8] Rollo, p. 186.

[9] Id. at 19.

[10] Id. at 1.

[11] Id. at 21.

[12] Id. at 36.

[13] Id. at 52.

[14] Id. at 61.

[15] Id. at 61-62.

[16] Id. at 64-65.

[17] Id. at 65.

[18] Id.

[19] *People v. Dimaano*, G.R. No. 168161, 14 September 2005, 469 SCRA 647, 663; *People v. Sandico*, 366 Phil. 663, 676 (1999).

[20] *People v. Gallo*, G.R. No. 124736, 22 January 1998, 284 SCRA 590, 614, citing *People v. Ibay*, G.R. No. 101631, 8 June 1994, 233 SCRA 15, 25; *People v. Lucas*, G.R. No. 80102, 22 January 1990, 181 SCRA 316, 325-326; *People v. Valdez*, G.R. No. L-51034, 29 May 1987, 150 SCRA 405, 412; *People v. Ibal*, 227 Phil. 294, 301 (1986); *People v. Seculles*, 217 Phil. 619, 628-629 (1984).

[21] *People v. Gallo*, id.

[22] TSN, 3 August 2001, p. 24.

[23] *People v. Paraiso*, G.R. No. 131823, 17 January 2001, 349 SCRA 335, 350; *People v. Tabanggay*, 390 Phil. 67, 89 (2000); *People v. Silvano*, 368 Phil. 676, 697 (1999); *People v. Escala*, 354 Phil. 46, 59 (1998).

[24] *People v. Lagarto*, 383 Phil. 591, 649 (2000); *People v. San Juan*, 337 Phil. 375, 389 (1997); *People v. Alimon*, 327 Phil. 447, 469 (1996).

[25] *People v. Sangil, Sr.*, 342 Phil. 499, 506 (1997); *People v. Leoterio*, 332 Phil. 668, 675 (1996); *People v. Talaboc*, 326 Phil. 451, 460 (1996).

[26] 327 Phil. 349, 360 (1996).

[27] 323 Phil. 412, 426 (1996).

[28] TSN, 15 June 2001, p. 25.

[29] TSN, 15 July 2001, p. 17.

[30] *People v. Naag*, G.R. No. 136394, 15 February 2001, 351 SCRA 694, 701.

[31] *People v. Zaballero*, G.R. No. 100935, 30 June 1997, 274 SCRA 627, 640; *People v. Bugarin*, 339 Phil. 570, 584 (1997); *People v. Butron*, 338 Phil. 856, 866 (1997).

[32] *People v. Ibay*, G.R. No. 101631, 8 June 1994, 233 SCRA 15, 25.

[33] *People v. Mirafuentes*, G.R. Nos. 135850-52, 16 January 2001, 349 SCRA 204, 213.

[34] TSN, 3 August 2001, pp. 13-23; records, pp. 321-331.

[35] *People v. Bernabe*, 421 Phil. 805, 811 (2001); *People v. Melivo*, supra note 27; *People v. de Guzman*, 333 Phil. 50, 66 (1996).

[36] *People v. Mangitngit*, G.R. No. 171270, 20 September 2006, 502 SCRA 560, 574.

[37] *People v. Escultor*, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.

[38] 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.

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

[40] 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.

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

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

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

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