

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HERMINIGILDO SALLE SOBUSA, ACCUSED-APPELLANT.

G.R. No. 181083. January 21, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

On automatic review is the Decision[1] dated July 27, 2007 of the Court Appeals in CA-G.R. CR-HC. No. 00315 which affirmed with modification the Decision[2] dated October 1, 2003 of Branch 30, Regional Trial Court (RTC) of Iloilo City in Criminal Case No. 52407 convicting beyond reasonable doubt accused-appellant Herminigildo Salle Sobusa of qualified rape defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, as amended.

Consistent with our ruling in *People v. Cabalquinto*[3] and *People v. Guillermo*,[4] this Court withholds the real name of the private offended party and her immediate family members as well as such other personal circumstance or information tending to establish her identity. The initials AAA represent the private offended party and the initials BBB and CCC refer to the mother and biological father, respectively, of the private offended party. DDD shall stand for the name of the elder sister of the mother of the private offended party.

The information against accused-appellant reads:

That sometime, a few days before the Holy Week of the year 2000, in the Municipality of San Miguel, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lust and lewd design, by means of force and intimidation, did then and there willfully, unlawfully and feloniously did lie and succeed in having carnal knowledge of [AAA], his step-daughter, a minor, ten (10) years of age, against her will and consent.[5]

Accused-appellant pleaded not guilty on his arraignment.[6] The pre-trial conference of the parties followed. The Pre-Trial Order[7] dated January 29, 2001, issued by the RTC, contains the respective admissions of the parties as follows:

ADMISSION:

- The defense admits that Herminigildo Sobusa is the same person accused in this case.
- The defense admits the identity of the offended party [AAA] as the stepdaughter of the accused.
- The accused admits that the mother of the complainant and the accused are married.
- The accused admits that the complainant is the daughter of the wife of the accused.
- That the offended party [AAA] is a minor, ten (10) years of age, at the time of the incident a few days before the Holy Week of the year 2000.
- The defense admits the existence of the Medico-Legal Certificate of [AAA] dated May 30, 2000 issued by Dr. Leah D. Cambronero-M.D. OB-Gyne, Western Visayas Medical Center, Mandurriao, Iloilo City.

- The defense admits the existence of the entries of the Police Blotter of the PNP Station San Miguel, Iloilo regarding the aforesaid rape incident.
- The prosecution admits that [AAA] was under the custody of her auntie at Santa Barbara, Iloilo, a few weeks before the alleged incident.

The trial court summarized the evidence in chief presented by the parties during the trial which we quote as follows:

EVIDENCE FOR THE PROSECUTION

The private complainant in this case is [AAA], an 11 year-old x x x. She is the daughter of [BBB] and [CCC] out of wedlock. She was born on October 3, 1989 as evidenced by her Certificate of Live Birth.

Her mother, BBB, was married to herein accused Herminigildo Sobusa x x x as shown by their [Certificate] of Marriage. Accused Sobusa is a widower with children and working as a security guard of the Philippine National Bank. After the marriage of her mother and the accused, she lived with her grandmother x x x.

When her grandmother died in October, 1999, she lived with her mother and stepfather, herein accused Herminigildo Sobusa. However, when her mother BBB left for Taiwan in November, 1999, she was left by her mother under the custody of her [aunt DDD], the elder sister of her mother in XXX. She transferred to the house of her [aunt DDD] in December, 1999, and she stayed there for only one month and a half because her stepfather wrote her mother a letter that she was always sick, thus, in February, 2000, she was transferred by her [aunt DDD] to the house of her stepfather, Herminigildo Sobusa, in XXX. She was only then in Grade IV x x x.

She lived in the house of her stepfather in XXX, until April, 2000, only because before the Holy Week of the year 2000 (April 17 to 21, 2000), she was raped, according to her, by herein accused Herminigildo Sobusa. When she was raped, she narrated the following story:

Sometime before April 17, 2000, at about a quarter of nine in the evening while she was sleeping, she was awakened when she felt that somebody was mashing her whole body. When she woke up, she saw her stepfather whom she called as her papa (referring to accused Sobusa), as the one mashing her whole body. Accused Sobusa then immediately covered her mouth by using his palm. She did not also shout because [she] was afraid of the accused. Thereafter, accused undressed himself and pulled down her shorts with her panty to her knees and inserted his penis into her (complainant) vagina and made a push and pull movement. While doing these acts, accused was lying on the complainant's back while the latter was lying face down. Accused also let her lie on her back, mashed her whole body and kissed her, and thereafter, he (accused) stood up and went to the comfort room. She did not notice something coming out from the accused's sex organ.

She resisted to free herself but to no avail. According to her (complainant), there was only a slight penetration because she did not feel the pain but she was very sure that what was inserted into her vagina was the penis of the accused and not his finger because his fingernails were sharp and pointed and besides the penis of the accused is bigger in size than the finger of the accused. She did not feel the pain although she has not yet experienced having sexual intercourse with a man. She was very sure that it was the accused who raped her because the accused also let her lie on her back, and also because of the reflection of the light in her room.

After doing said sexual act, complainant pulled her pillow and placed it between her thighs and the following morning, she discovered that the pillow was wet with bloodstains. She then told her papa (referring to accused) about the bloodstains but the accused told her just to keep quiet because he will just wash the pillow and the panty. At first, she did not tell anybody about it, however, her Tita Bebing, the half sister of her papa (accused), overheard the same. Upon inquiry by her Tita Bebing, she told her about the incident but her Tita told her just to keep quiet. In May 2000, however, she also told her two friends x x x about the incident that happened to her and her friends advised her to tell everything to her [aunt DDD] which the complainant did.

Thereafter, they reported the incident to the barangay captain and the latter also reported the same to the Municipal Hall x x x and a warrant was issued for the arrest of the accused.

x x x x

Dra. Ma. Theresa Cedullo x x x a resident physician assigned at the OB-Gyne Department, Western Visayas Medical Center, Mandurriao, Iloilo City (government hospital), and currently in her fourth year residency acting as Chief and Senior Resident of the OB-Gyne Dept., testified that Dr. Leah Cambronero, the physician who examined herein complainant [AAA], at the time of her examination on the victim, was a Medical Officer IV of the Department of Health, Western Visayas Medical Center (OB-Gyne Dept.). However, after she graduated from her residency training, she resigned from the WVMC and engaged in private practice in Puerto Princesa Palawan.

She identified the Medico Legal Certificate issued by Dr. Leah Cambronero as well as the signature and findings appearing therein. The findings and/or diagnosis appearing in said Medico Legal Certificate is hereunder quoted as follows:

x x x x

"IMPRESSION: INCOMPLETE OLD HEALED HYMENAL LACERATION AT 10 & 12 O'CLOCK POSITION, FUNGAL INFECTION."

The doctor further explained that the findings which says "old healed laceration at 10 & 12 o'clock positions" means that there is a presence of hymenal laceration, however, it does not traverse to the whole length of the hymen, and the same was no longer bleeding. She further added that the old healed hymenal laceration could have been inflicted on the victim a month or more prior to the date of the examination conducted by Dr. Cambronero, depending however on the healing process of the patient. This incomplete old healed laceration according to the witness could be caused by trauma, like a hard penis used in the area, blood clots during menstruation, by manipulation on the area either by the child herself or by another person or by the use of other objects. In this case, there is a possibility that the hymenal laceration was caused by trauma through the forcible insertion of a stiff or hard penis into the vagina of the victim.

According to the doctor, the introitus of the victim admits one finger with difficulty which means that the patient has not been able to give birth yet. Because of the presence of numerous pus cells, she added, although the patient was not subjected to urinalysis, this signifies that there was fungal infection. Hygiene is one factor which may cause fungal infection and also estrogenic infection which would be transferred to the victim by another source. Hence, it is possible that this fungal infection suffered by the victim was caused by sexual intercourse committed on the victim.

x x x x

[DDD], the elder sister of [BBB], the mother of herein complainant, corroborated the testimony of [AAA] on some material aspects x x x.

On April 25, 1997, her sister [BBB], was married to herein accused Herminigildo Sobusa as evidenced by the Certificate of Marriage x x x but nobody in their family had attended said marriage since their family did not approve of said marriage considering that accused Sobusa is a drunkard and has children with his previous wife. In fact she only knew about said marriage in 1999.

According to her, when her sister left for Taiwan and Hongkong in 1999 and 2001, respectively, [AAA] was left under her custody by her sister because among her brothers and sisters, she was the only one left living in XXX. Thus, in December, 1999, [AAA] lived with her in XXX. However, herein complainant only stayed with her for only two months because her sister, [BBB] wrote her a letter to transfer [AAA] to XXX, thus, in the middle of February 2000, complainant transferred to XXX, to the house of his stepfather Herminigildo

Sobusa.

Complainant lived with her stepfather together with Pane and Bebe, the stepsisters of the accused, the grade IV son of the accused with another woman and the three-year old son of the accused with [BBB].

On May 23, 2000, herein complainant visited her in their house in XXX, and that was the time the complainant told her that she was raped by accused Sobusa. She then confronted accused Sobusa about the incident in the afternoon of the same day but the latter denied having raped [AAA]. She then told her cousin Anselma Sarisola and their relatives about the incident and they decided to have [AAA] examined. They reported the incident to the Police Station of San Miguel, Iloilo, as evidenced by the excerpt of the Police Blotter. They also referred this case to the DSWD Lingap Center in Bo. Obrero which took [AAA] into custody x x x.

x x x x

SPO3 Romeo Villasis, Police Investigator of San Miguel, Iloilo, identified the excerpt of the Police Blotter and explained that it was PO3 Brion, Women and Child Desk Officer who made the entry of the incident in the official blotter book, however, he based his certification on another logbook also entered by PO3 Brion x x x. Nevertheless, both the prosecution and the defense stipulated that the entry which says: "child, female and temporarily residing at XXX" also appeared in the official blotter book presented by the witness.

EVIDENCE FOR THE ACCUSED:

Accused Herminigildo Sobusa, 43 years old, married and a resident of Sta. Teresa, San Miguel, Iloilo, and a security guard assigned at the Philippine National Bank, Iloilo Branch, on his behalf, testified as follows:

x x x x

He only came to know about the filing of this Rape case against him in May, 2000 and upon knowing this, he voluntarily surrendered to SPO1 Juanito Molinas, Jr. of San Miguel PNP and he was placed in the lock up cell.

He vehemently denied having raped [AAA] because being employed as Security Guard of the PNB, Iloilo Branch, his duty was always during night time, from 3:00 o'clock in the afternoon to 11:00 o'clock in the evening or from 11:00 o'clock in the evening until 7:00 o'clock the following morning. In the months of March and April 2000, according to him, he was on night shift duty everyday, and he also had Daily Time Records showing the schedule of his duties as security guard.

He further stated that this case was only instigated by [DDD], sister of his wife [BBB], their aunts and cousins because according to them, he (accused) is a gambler, a drunkard and he had another family and they wanted to separate them. However, he also admitted that prior to the filing of this case, he and [DDD] were also in good terms and that he used to drink every night but only to relieve his tiredness. He likewise admitted that he gambled using his wife's allotment but only when there were special occasions.

Accused further testified that he does not know that herein complainant suffered hymenal lacerations and if ever [AAA] suffered lacerations, it does not mean that he raped her because sometimes herein complainant goes home late at night, and besides she had a boyfriend who is older than her, and there is a possibility that his boyfriend was the one who caused her lacerations. He does not know the name of the complainant's boyfriend but he only met him when he (accused) was on his way to report for duty since he was following the complainant. He only came to know about the complainant's boyfriend around five (5) to six (6) months prior to the filing of this case against him.

Furthermore, the [accused] stated that [AAA] used to sleep in one room with Gil, his youngest son with his first wife who was 11 years old in the year 2000, while his stepsister and his son with [BBB] were sleeping in the other room, and he sleeps in the sala. Everytime the complainant slept in the witness' house, his son Gil was sleeping with her in one room and he also tolerated the same because he wanted them to treat each other as brother and sister.

x x x x

The testimony of the accused was corroborated by his aunt Margarita Sobusa also a resident of Roxas St., San Miguel, Iloilo, which is about five kilometers from the house of accused Sobusa. She testified that the family of [BBB] was not in good terms with the family of Herminigildo Sobusa and she knew this fact because Herminigildo Sobusa also shared his problem with her. According to her, the family of [BBB] does not favor her marriage to the accused Herminigildo Sobusa because the latter had another family, and the money sent by [BBB] to him was spent by the accused in his gambling activity x x x.

The fact of Sobusa's surrender to the police authorities was testified to by SPO1 Juanito Molinos, a PNP member assigned at the San Miguel Police Station. According to this witness, accused Herminigildo Sobusa, accompanied by his wife, voluntarily surrendered to him on June 2, 2000 because he was on duty during that time x x x.[8] [Citation of documentary exhibits omitted.]

On rebuttal, the prosecution presented evidence to refute accused-appellant's claim that he was on duty every night on the month of April of 2000 and to show that AAA was raped sometime on April 11 to 15, 2000. The trial court's gist of the rebuttal evidence for the prosecution follows:

To rebut the testimony of the accused regarding his alleged night shift duty, the prosecution presented as rebuttal witness Severino Pago, Chief Security assigned at the PNB main branch. He testified that as Chief Security Guard of the PNB main branch, it was his duty to supervise and discipline the security guards under him, one of whom was herein accused Herminigildo Sobusa. The latter was under him since May, 1994, until this case was filed against him in the year 2000.

x x x x

According to the witness, he first checked the Daily Time Records with the time cards if they coincide with each other and then submitted the same to Mr. Valderama. He prepared and kept the daily time records of the security guards under him and if ever a guard reported for duty during Saturdays and Sundays, said overtime work was also being recorded. According to him accused Sobusa reported for night duty on March 1-11, 2000; March 17-20, 2000; April 17-20, 2000, and on April 23, 2000, while, on March 13-19, 2000; March 26, 31, 2000; April 8-16, 2000; April 24-28, 2000, he reported for day duty, and on April 21-22, 2000 (Holy Thursday and Good Friday, respectively) and April 28-31, 2000 he had not reported for duty.

Upon inquiry by the court as to the specific time in and time out of accused Sobusa from April 10-16, 2000, the daily time records of the accused for the aforementioned dates are hereunder indicated:

April 10, 2000 - 7:00 A.M. - 3:00 P.M.;
April 11, 2000 - 6:42 A.M. - 3:09 P.M.;
April 12, 2000 - 7:12 A.M. - 3:05 P.M.;
April 13, 2000 - 6:53 A.M. - 3:10 P.M.;
April 14, 2000 - 6:53 A.M. - 3:05 P.M.;
April 15, 2000 - accused was not on duty;
April 16, 2000 - 7:15 A.M. - 3:45 P.M.

[AAA], on rebuttal, testified that she was not very sure of the exact date when she was raped by accused Sobusa but as far as she can remember, it was only a few days before the Holy Week. According to the witness the Holy Week is composed of seven (7) days and the same starts on April 17 to 23, 2000, hence, the rape according to her was committed a few days before April 17, 2000. However, when asked by the court regarding the date when she was allegedly raped, the witness stated that she was sure that she was raped between the dates April 11 to 15, 2000.[9] [Citation of documentary exhibits omitted.]

The trial court rendered judgment finding accused-appellant guilty beyond reasonable doubt of the crime charged.

The dispositive portion of the decision reads:

WHEREFORE, based on the foregoing, the court finds the accused Herminigildo Sobusa Guilty Beyond Reasonable Doubt for the crime of Rape committed [against] the person of his stepdaughter [AAA] under Art. 266-A, par. (1) of the Revised Penal Code.

The court also finds that the crime of Rape committed by the accused Herminigildo [S]obusa falls within the aggravating/qualifying circumstances as stated in par. (1) of Art. 266-B of the Revised Penal Code.

Considering that the crime of Rape falls under the aforementioned aggravating/qualifying circumstances under par. (1), the court hereby imposes on the accused Herminigildo Sobusa the supreme penalty of DEATH.

The accused is further directed to indemnify the complainant [AAA] for the offense committed on her person in the amount of P75,000.00 and the amount of P50,000.00 as moral damages.[10]

The appeal was directly filed before this Court. The accused-appellant filed his Brief[11] on October 20, 2004 while the plaintiff-appellee filed its Brief[12] on March 30, 2005. In a Resolution[13] dated July 19, 2005, we transferred this case to the Court of Appeals for appropriate action conformably with our ruling in *People v. Mateo*.[14]

The appellate court affirmed with modification the judgment of the trial court. The accused-appellant was sentenced to suffer a reduced penalty of reclusion perpetua, ordered to pay an increased amount of moral damages, and further ordered to pay exemplary damages in favor of the private offended party, thus:

WHEREFORE, premises considered, the Decision of the Regional Trial Court dated October 1, 2003 finding accused-appellant Herminigildo Sobusa guilty beyond reasonable doubt of qualified rape is AFFIRMED with MODIFICATION that the penalty of death imposed on accused-appellant is reduced to reclusion perpetua. He is also ordered to pay private complainant [AAA] (to be identified through the Information in the instant case), the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages. Costs against accused-appellant.[15]

This case was then elevated to us for a final review. In a Resolution[16] dated February 13, 2008, we required the parties to submit their respective supplemental briefs. The parties, however, manifested that they have exhausted their arguments before the courts below and, thus, will no longer file any supplemental brief.[17]

Accused-appellant insists on the same error he raised before the appellate court:

THAT THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

Accused-appellant asserts that the charge of rape against him was merely prodded by AAA's relatives who were not in good terms with him as they did not approve of his marriage with AAA's mother. He alleges that he treated his stepdaughter, AAA, as his very own daughter and denies having raped her. Accused-appellant also points out that he could not have committed the crime imputed to him because, as a security guard, he often worked on the night shifts from 3:00 p.m. until 11:00 p.m. or from 11:00 p.m. until 7:00 a.m. of the following day.

We affirm the conviction of the accused-appellant.

There are three settled principles in reviewing evidence on rape cases: (1) an accusation for rape can be made with facility, it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (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.[18]

The accused-appellant was convicted beyond reasonable doubt of the crime of qualified rape on the basis of the following: (1) AAA's credible testimony concerning the rape incident; (2) AAA's positive identification of accused-appellant as the one who raped her; (3) physical evidence consistent with AAA's assertion that she was raped; and (4) the absence of ill motive on AAA's part in filing the charge.

Testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity.[19]

AAA's testimony that she was raped by the accused-appellant is highly trustworthy not only because of the fact that she was merely a young lass below twelve years of age at the time she testified before the trial court who would not concoct a sordid tale against his stepfather whom she endearingly calls "papa" but more so because of her candid, positive, direct, and consistent narration of how her stepfather sexually abused her. She vividly recounted that she was awakened one night when she felt someone touching her body. AAA identified the aggressor as the accused-appellant who immediately covered her mouth with his hand. The accused-appellant then undressed himself, pulled AAA's shorts and panty, and unleashed his bestial desire upon her until his lust was satiated. AAA distinctly and extensively related the details during and after the rape incident as follows:

PROS. CABALUM:

Q: Now, before the Holy Week, before April 17, 2000 while you were sleeping in the house of your stepfather can you tell this Honorable [Court] if there was any unusual incident that happened when you were there sleeping?

A: Yes, ma'am.

Q: What was the incident all about?

A: While I was sleeping I felt that somebody was mashing the whole of my body.

Q: Now, by the way, where were you sleeping at that time because you said, you have been staying and sleeping in the house of your stepfather. In what part of the house were you sleeping at the house of your stepfather?

A: Inside the room.

x x x x

Q: Now in that room you said, you were sleeping that night could you tell us, if [you had] a companion?

A: No, ma'am.

Q: You mean to say, you were alone in that room?

A: Yes, ma'am.

x x x x

Q: Now, how about what time was that when you said that somebody was mashing your whole body while you were sleeping in that room in April of 2000?

A: Around quarter to nine in the evening.

Q: Then what happened after you said, you felt that while sleeping somebody was mashing your whole body?

A: I was awakened.

Q: And after you were awakened what happened?

A: I saw my papa.

Q: You said, after you woke up you saw your stepfather or your papa?

A: He covered my mouth.

Q: Who covered your mother?

A: My stepfather.

Q: Your stepfather which you called papa?

A: Yes ma'am.

x x x x

Q: Now, this Herminigildo Sobusa is the same person whom you are calling papa or your stepfather?

A: Yes ma'am.

Q: And now you said, you saw your father and he covered your mouth. What did he use in covering your mouth?

A: His palm.

x x x x

Q: And after he covered your mouth, now what did he do?

A: He pulled my shorts.

Q: He pulled your shorts and after he pulled your shorts what happened?

A: He inserted his penis into my vagina.

Q: Now, before he inserted his penis into your vagina you said, he [took] off your shorts. Now how about your panty you had no panty that night?

A: I [had] a panty, ma'am.

Q: How about your panty, what did he do with your panty?

A: He did not completely [pull] my panty he just pulled it down up to my knees.

Q: You mean to say, he pulled your panty down up to your knees?

A: Yes ma'am.

Q: And now could you describe to us what was the appearance of your papa when he pulled your shorts and then released your panty up to your both knees and you said he inserted his penis into your vagina was he already undressed or with his complete clothing?

A: He has his shirt on, but he had no more shorts and brief.

Q: Meaning to say, that was the time when you open your eyes because you said you were awakened because somebody was mashing you and identified him as your stepfather?

A: Yes ma'am.

Q: So, meaning when he covered your mouth he undressed himself and after he undressed you also?

A: Yes ma'am.

Q: And what was your position when you said he inserted his penis into your vagina?

A:

I was [lying] face down.

Q: Now, you said [you were lying] face down and what happened because [you were lying] face down. Could you tell this Honorable Court, if there [was] any penetration?

A: Its slight penetration.

Q: When you say slight penetration did you not feel the pain?

A: I [did] not feel any pain.

Q: After he inserted his penis [in] your vagina that did he do?

A: He did a push and pull action.

Q: He did a push and pull action for how long?

x x x x

A: Not [too] long.

Q: During those times that your stepfather was doing that act to you having sexual intercourse with you did you not struggle hard in order to free yourself?

A: I was resisting.

Q: You were resisting. Now, were you able to resist?

A: I was not able to free myself?

Q: Considering that your position was [lying] face down, what was the position of your stepfather when he was doing that sexual intercourse with you?

A: He was [lying] on my back.

x x x x

Q: Now, aside from that fact that your stepfather do, what other position did your stepfather do when he was having sexual intercourse with you?

A: He changed my position by letting me lie down on my back.

Q: And what was his position at that time while he was doing that intercourse with you while [you were lying] at your back?

A: He was in my front.

Q: What do you mean by that he was in your front?

A: He was in my front kissing me.

Q: After kissing you what did he do?

A: He was mashing all the parts of my body.

Q: And after mashing all the parts of your body what did he do?

A: He stood up.

x x x x

Q: Now, you did not complain to your stepfather why he was doing that to you?

A: No ma'am. Because I don't know of what he was doing.

Q: Now, in the following morning what happened after you woke up?

A: I felt that my pillow which I inserted between my thighs was wet and I lift under the fluorescence lamp and I saw bloodstains.

Q: So what did you do after you saw bloodstains?

A: I told papa that I was bleeding.

Q: And what was the answer of your father?

A: He told me that I will keep quiet because he will wash.

Q: He will wash what?

A: He will wash my panty and my pillow.

Q: Because of that you [kept] quiet. You did not tell anybody inside your house of what did your papa do to you that evening?

A: When I told papa that I was bleeding there was somebody who heard it.

Q: And who was that somebody who heard it?

A: My tita Bebing, ma'am.

Q: Who is this tita Bebing of yours?

A: She is the half-sister of my stepfather.

Q: And what did your tita Bebing tell you because you said she heard you when you [said] that you were bleeding?

A: She comes to me in the following morning.

Q: And what did you tell her?

A: I told her that papa raped me.

Q: And what was the reaction of your tita Bebing who is the half-sister of your stepfather?

A:

She told me to keep quiet because mama will get angry at her.[20]

Jurisprudence is likewise settled that when the rape victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal

knowledge. Laceration, whether healed or fresh, is the best physical evidence of forcible defloration.[21] In this case, the medical finding of AAA's old healed hymenal lacerations is consistent with her testimony that her private parts bled after she was sexually ravished.

The prosecution successfully established the qualifying circumstance of relationship of AAA with the accused-appellant as well as AAA's minority. AAA is the stepdaughter of the accused-appellant in view of the marriage of AAA's mother with accused-appellant.[22] The birth certificate of AAA, on the other hand, proves that she was only 10 years old on the month of April of the year 2000 or at the time the rape was committed.[23]

It is elementary that the bare denial of the accused-appellant of his commission of the crime charged as well as his contention that AAA could not have seen him as she was lying with her face down when she was raped cannot overcome the positive, clear, and detailed testimony of AAA that she saw the accused-appellant when she was roused from sleep when he touched her body and then subsequently raped her.

Accused-appellant's imputation of ill motive on the part of AAA's family in the filing of this case is bereft of convincing evidence. This Court has consistently held that no family member would expose a fellow family member to the ignominy of a rape trial or to the shame and scandal of having to undergo such a debasing ordeal merely to satisfy their alleged motive if the charge is not true.[24] In this case, we are not inclined to believe that the relatives of AAA would subject the latter to the humiliating and agonizing experience of a public trial just to falsely accuse a person of the commission of the crime of rape. Nonetheless, ill motive is not an element of the crime of rape and the attribution of ill motive in this case cannot overturn the well-established essential elements of the crime charged.

The alibi of the accused-appellant is similarly untenable. It is well-settled that alibi cannot be sustained where it is not only without credible corroboration but also does not, on its face, demonstrate the physical impossibility of the presence of the accused at the place of the crime or in its immediate vicinity at the time of its commission.[25] Aside from the fact that AAA positively testified that the accused-appellant was her assailant and that she was raped a few days before the start of the Holy Week of the year 2000 or sometime on April 11 to 15, 2000, the daily time records of the accused-appellant easily belie his claim that he worked on the night shifts from April 10 to 16, 2000.

Accused-appellant's attempt to mitigate his culpability by claiming that he voluntarily surrendered to the police immediately after being informed of the charges against him is futile. Jurisprudence requires that a surrender, to be voluntary, must be spontaneous and must clearly indicate the intent of the accused to submit himself unconditionally to the authorities[26] either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense incidental to his search and capture.[27] The following requisites should likewise be present: (1) the offender had not been actually arrested; (2) the offender surrendered himself to a person in authority or to the latter's agent; (3) the surrender was voluntary; and (4) there is no pending warrant of arrest or information filed.[28] In this case, the accused-appellant surrendered only after having been informed of the charge of rape against him or about two months from the commission of the alleged crime.[29] He even denied the said charge upon his purported surrender. The alleged surrender, therefore, does not qualify as a mitigating circumstance.[30]

The accused-appellant was duly charged and convicted of the crime of rape under Article 266-A of the Revised Penal Code, as amended, and qualified by AAA's minority and relationship with him. The appellate court, therefore, correctly ordered accused-appellant to pay the victim the amount of P75,000.00 as civil indemnity and another P75,000.00 as moral damages consistent with current jurisprudence on qualified rape. However, the exemplary damages in the amount of P25,000.00 should be increased to P30,000.00 in line with recent case

laws.[31]

WHEREFORE, in view of the foregoing, the Decision dated July 27, 2007 of the Court of Appeals in CA-G.R. CR-HC. No. 00315 which affirmed with modification the Decision dated October 1, 2003 of Branch 30, Regional Trial Court of Iloilo City in Criminal Case No. 52407 convicting beyond reasonable doubt accused-appellant Herminigildo Salle Sobusa of qualified rape, sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay civil indemnity and damages, is hereby **AFFIRMED** with **MODIFICATION** that accused-appellant is ordered to pay the victim exemplary damages in the increased amount of P30,000.00 in addition to P75,000.00 as civil indemnity and P75,000.00 as moral damages, plus interest on all damages awarded at the legal rate of 6% from this date until fully paid. No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio Morales, Bersamin, and Villarama, Jr., JJ., concur.

[1] Penned by Associate Justice Francisco P. Acosta with Associate Justices Pampio A. Abarintos and Stephen C. Cruz, concurring; rollo, pp. 4-25.

[2] CA rollo, pp. 24-41.

[3] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] G.R. No. 173787, April 23, 2007, 521 SCRA 597, 599.

[5] Records, p. 1.

[6] Id. at 38-39.

[7] Id. at 52-53.

[8] CA rollo, pp. 25-31.

[9] Id. at 31-32.

[10] Id. at 40-41.

[11] Id. at 55-84.

[12] Id. at 93-119.

Id. at 127.

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

[15] Rollo, p. 24.

[16] Id. at 31.

[17] Id. at 32-37.

[18] People v. Corpuz, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 444.

[19] Id.

[20] TSN, March 19, 2001, pp. 3-13.

- [21] *People v. Brondial*, 397 Phil. 663, 688 (2000).
- [22] *Records*, p. 142.
- [23] *Id.* at 143.
- [24] *People v. Hamto*, 414 Phil. 561, 575 (2001).
- [25] *People v. Honra, Jr.*, 395 Phil. 299, 319 (2000).
- [26] *People v. Brecinio*, 469 Phil. 654, 666 (2004).
- [27] *People v. Cagas*, G.R. No. 145504, June 30, 2004, 433 SCRA 290, 300.
- [28] *Id.*
- [29] TSN, July 29, 2002, p. 3.
- [30] *People v. Cortezano*, 425 Phil. 696, 720 (2002).
- [31] *People v. Sarcia*, G.R. No. 169641, September 10, 2009.
- [31] *People v. Sarcia*, G.R. No. 169641, September 10, 2009.
- [29] TSN, July 29, 2002, p. 3.
- [30] *People v. Cortezano*, 425 Phil. 696, 720 (2002).

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