

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GODOFREDO SAYAT, ALIAS "BOBBY" OR
"BUBOY," ACCUSED-APPELLANT.**

G.R. Nos. 102773-77. June 08, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

The conventional attribution is that lust is the motivating cause for rape, although a view is held that this crime is actually a misguided and blatant mode of domination by one gender over the other. Regardless of the sociological cause, the law considers rape as one of the most odious offenses. It becomes more abominable where the rape victim is a minor whose innocent world is suddenly shattered, leaving her with the psychological wounds from her traumatic experience as she faces an uncertain future. The unkindest cut, so to speak, is when the transgressor is the victim's own kin. The confluence of such detestable circumstances in what is by itself already a heinous crime against chastity is exemplified by the present case.

Accused-appellant Godofredo Sayat, alias "Bobby" or "Buboy," was charged with five crimes of rape in five separate criminal complaints subscribed by eight-year old Marites Sayat and docketed as Criminal Cases Nos. 85574, 85575, 85576, 85577 and 85578 of the Regional Trial Court of Pasig, Metro Manila, Branch 156. Except for the dates of commission of each felony, which is August 28, 1990 in Criminal Case No. 85578, August 29, 1990 in Criminal Case No. 85574, August 30, 1990 in Criminal Case No. 85575, August 31, 1990 in Criminal Case No. 85576 and September 1, 1990 in Criminal Case No. 85577, said complaints were identically formulated, to wit:

"That on or about x x x in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of threat, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, Maritess (sic) P. Sayat, a minor of eight years old, (sic) against her will and consent." [1]

Appellant pleaded not guilty to all the charges when arraigned. After a consolidated trial of said cases, the court a quo rendered judgment on October 15, 1991 disposing as follows:

"IN VIEW OF ALL THE FOREGOING, the Court finds the accused GODOFREDO SAYAT alias 'BOBBY' or 'BUBOY' guilty beyond reasonable doubt of the crime of RAPE, defined and penalized under Article 335(3) of the Revised Penal Code, and with the aggravating circumstance of relationship, on five (5) counts, and is hereby sentenced to suffer the penalty of five (5) reclusion perpetua with all the corresponding accessory penalties, i.e., reclusion perpetua in each of the five (5) criminal cases -- -Crim. Case No. 85574, Crim. Case No. 85575, Crim. Case No. 85576, Crim. Case No. 85577, and Crim. Case No. 85578, to indemnify the victim, Marites P. Sayat in the amount of P30,000.00 in compliance with the mandate of Articles 100, 104(3), 107 and 345 of the Revised Penal Code and to pay the costs.

"In the service of his sentence, the accused shall be credited in full with the period of his preventive imprisonment and in any event not to exceed forty (40) years in line with the Three-Fold Rule." [2]

Dissatisfied with the decision, appellant interposed the instant appeal, faulting the court below with a lone assigned error, that is, in finding him guilty beyond reasonable doubt of the crime of rape.[3]

We find the synthesis made by the Solicitor General of the antecedent material facts of this case to be accurate and supported by the records, hence we adopt and reproduce the same:

"The prosecution's version of the incident is anchored principally on the testimony of the offended party Marites Sayat. Born on January 28, 1982, she was only nine years old when she was made to recount at the witness stand on May 2, 1991 the sordid details on how at age eight she was sexually violated five times by appellant, her half-brother ('kapatid sa ama') 18 years her senior. They, along with Maribel Halino, a relative, were then the only occupants of their house at No. 12 Camia Street, Marville Subdivision, Barangay de la Paz, Pasig, Metro Manila. Their father was abroad working as a seaman, while Marites' mother, Elisa Palicdon, was also abroad, in Hongkong, working as a domestic helper. On August 28, 1990, appellant ordered Marites, who was in skirt and t-shirt to go to the second floor of their newly constructed house just behind their old house. There, appellant instructed Marites to lie down and to remove her panty. Also removing his shortpants and his underwear, appellant then proceeded to rape Marites. He inserted his penis into the vagina of Marites. Marites felt pain. After achieving full penetration, appellant pulled out his penis and then dressed up. He warned Marites not to tell anyone about the incident (tsn., May 28, 1991, pp. 2-3).

"The following day, August 29, 1990, Marites was playing with the family computer in the living room when appellant came out of his room and again ordered her to go to the second floor of the newly constructed house. Although aware that appellant would rape her again, she nonetheless meekly obeyed as ordered because appellant threatened to squeeze her neck and kill her. At the second floor of the newly constructed house, appellant had sexual intercourse with Marites a second time (tsn., May 2, 1991, pp. 3-4).

"Then, on August 30, 1990, at about 6:00 o'clock in the evening, appellant ordered Marites into his room. There, appellant removed his shorts and underwear and Marites' panty. He switched off the light, got into his bed and ordered Marites to mount him, threatening to kill her if she disobeys. Out of fear, Marites did as told and placed herself on top (of the) appellant who inserted his penis into her vagina. Appellant let his penis stay inside the vagina for about two minutes, after which he pulled it out. He then switched on the light, dressed up and told Marites to leave the room. (tsn., May 28, 1991, p. 4).

"In the afternoon of the following day, August 31, 1990, appellant again ordered Marites to go to the second floor of the newly constructed house. Thereat, appellant had sexual intercourse with Marites for the fourth time that lasted for about four minutes (tsn., May 28, 1991, pp. 4-5).

"On September 1, 1990, appellant again ordered Marites to go to the second floor of the newly constructed house. However, while having sexual intercourse with Marites, appellant heard Maribel Halino calling for Marites. Whereupon, appellant hurriedly dressed up and went downstairs (tsn., May 28, 1991, p. 5).

"Earlier that day, appellant and Marites were watching television at the living room when Maribel Halino went to the bathroom to take a bath. However, when Maribel Halino went out of the the bathroom ten minutes later, she observed appellant and Marites already gone. She then started looking for them, calling out Marites' name. Then she saw appellant and Marites coming down the stairs of the newly constructed house. As she observed that Marites was trembling and looking very much afraid, she asked appellant what he had done to her. But appellant replied that he had done nothing (Exhibit 'D'). When Maribel Halino asked Marites what appellant had done to her, Marites too answered none. Marites was afraid that if she would tell what really had transpired, appellant would kill her (tsn., May 28, 1991).

"On November 22, 1990, when Elisa Palicdon, Marites' mother, arrived home from Hongkong, Maribel Halino informed her of the incident of September 1, 1990. Forthwith, Elisa Palicdon asked Marites who divulged all that appellant had done to her. Elisa Palicdon then brought her daughter to the PC Crime Laboratory Service at Camp Crame, Quezon City, where the latter was examined by Dr. Emmanuel L. Aranas (tsn., June 19, 1991,

pp. 2-3). x x x."[4]

On November 23, 1990, Dr. Emmanuel L. Aranas conducted a physical examination of the complainant and found that the complainant's hymen was congested with a healed laceration at 3:00 o'clock. He concluded that complainant was no longer a virgin and said laceration could have been sustained on the dates the five acts of rape took place.[5]

In his defense, appellant alleged that during the dates Marites was reportedly raped, he stayed with his common-law wife in a house in Altura, Sampaloc, Manila and did not return to their house at Marville Subdivision, Pasig until two weeks later.[6]

It is a fundamental evidentiary rule that the prosecution has the onus probandi of establishing the guilt of the accused, as a consequence of the tenet *ei incumbit probatio non qui negat*, that is, he who asserts, not he who denies, must prove. This is specially significant in rape cases for, generally, in the prosecution thereof the only two parties who can testify as to the occurrence are the complainant and the accused. More often than not, their respective testimonies are diametrically contradictory as to what really happened. [7]

Aware of the caveat that the testimony of a woman crying rape must be scrutinized with extreme caution, the Court has painstakingly assessed the records of the case and is convinced that appellant's guilt has been proven by clear and convincing evidence with the requisite quantum under the law.

Marites Sayat, at the time of the commission of the crimes, was only eight years of age. Under paragraph 3, Article 335 of the Revised Penal Code, statutory rape is committed by having carnal knowledge of a woman below twelve years of age. In this specie of rape, neither force by the man nor resistance from the woman forms an element of the crime and apparent consent thereto will be of no avail, any more than in the case of a child who may actually consent but who by law is conclusively held incapable of legal consent.[8] The law presumes that the victim on account of her tender years, does not and cannot have a will of her own.[9] The heart of the matter is the violation of a child's incapacity to discern evil from good.[10]

The simplicity and spontaneity of the testimony of Marites convinces us that she was telling the truth about her being sexually abused. Marites was able to categorically narrate in simple terms, without vacillation and in a straightforward manner, how appellant successively violated her and threatened her against revealing what happened.

It bears stressing that the credibility given by the trial court to the rape victim is an important aspect of evidence.[11] For having had the opportunity of observing the demeanor and behavior of the witnesses while testifying, the trial court, more than the reviewing tribunal, is in a better position to gauge their credibility and properly appreciate the relative weight of the often conflicting evidence for both parties.[12]

However, appellant puts emphasis on the following testimony of the offended party as proof of her alleged lack of credibility:

"Q: During the first incident, you looked at the clock in order for you to compute the time?

A: When I heard that he was opening his door, I immediately looked at the watch because I knew that he would do something to me."[13]

Appellant asserts that the offended party could not possibly have suspected his sinister motives before the alleged incident happened. Such statement, appellant argues, reveals that the charge of rape was a prevarication. We do not agree.

As aptly and correctly observed by the Solicitor General, the offended party misunderstood the question. In her

answer she speaks of hearing a door opened. The first time she was raped, appellant merely asked her to go to the second floor of the newly constructed house. Obviously, her answer does not refer to this occasion as it cannot be related to any door being heard to have been opened. However, the second time she was raped, she was playing with the family computer in the living room when appellant came out of his room. Here, she speaks of appellant coming out of the room. The opening of the door which she heard can be related to this statement. Clearly, herein complainant must have been referring to this occasion when she answered the question.[14]

In any event, minor lapses are to be expected when a person is recounting details of a humiliating experience which are painful to recall. The victim was testifying in open court in the presence of strangers, about an extremely intimate matter not normally talked about in public. Such circumstances may be expected to cause the witness' narration to be less than letter-perfect.[15] Considering the courtroom atmosphere and her very tender age, Marites must be lauded, for having recounted in a forthright manner an obviously harrowing ordeal. A rape victim relives the excruciating sexual assault everytime she is made to retell the story, particularly if done in a public setting.

Marites testified that the first three sexual assaults lasted three minutes each; the fourth, four minutes; and the last, two minutes.[16] Appellant advances the theory that the victim's ability to recount in a precise manner the duration of each sexual assault somehow diminishes the witness' credibility. The Court believes otherwise. These are merely calculations or estimates of the periods involved in the commission of the crime. What is controlling is the complainant's positive identification of appellant as the malefactor. Considering the tender age of Marites, latitude must be granted in the appreciation of her testimony, particularly where it refers to peripheral and minor details.

The testimony of a rape victim as to who abused her is credible where she has no motive to testify falsely against the accused.[17] Appellant, however, postulates that the instant rape cases were fabricated because of a grudge against him by his stepmother, Elisa Palicdon, who is the natural mother of victim Marites Sayat. Appellant contends that his father had a house built for him and his common-law wife, but Palicdon wanted the house for herself, so the latter instigated the charges against him.[18]

The Court considers such attempted dialectics as constitutive of a desperate proposition by one who feels that the hands of retributive justice are closing in on him. It is highly unlikely for a mother to concoct a fabricated charge of rape and thereby expose her own child and family to disgrace and scandal. No mother in her right mind would ruin her daughter's future by subjecting her to ridicule and the humiliation of a physical examination of her private parts merely for material gain. On the other hand, no other motive can be ascribed to complainant in filing the rape charge, except her desire for justice and redress for the despicable wrongs inflicted by appellant.[19]

The Court notes that Elisa Palicdon was working as a domestic helper in Hongkong during the period when the five acts of rape happened.[20] It is safe to surmise that her primary purpose in working abroad, like many other overseas contract workers, is to provide a good life for her child. Her financial status was not so desperate that she would willingly barter her daughter's reputation and future for a house. Hence, appellant's assertion that Elisa Palicdon's ulterior motive in falsely charging him with rape is merely due to monetary consideration does not merit any consideration.

Appellant further contends that complainant's failure to inform anyone about the repeated sexual assaults against her person undermines her credibility. We reject this sub-mission. Delay in reporting the incident is not an indication of a fabricated charge.[21] En contra, we have repeatedly held, and this is a matter of common observation and knowledge, that the reactions or behavior of persons when confronted with a shocking incident vary.[22] Some may immediately notify their trusted friend or relatives. Others prefer or feel compelled to suffer

in silence.

Complainant testified that appellant threatened to kill her. Evidently, a threat made to a young girl would have a greater effective result than one made to an adult. Also, considering her immature mental state and emotional development, said threat sufficed to cause her to conceal her tribulations until she was interrogated by her mother. It is not uncommon for young girls to conceal for some time the assaults on their virtue because of the rapist's threat on their lives.[23] Marites could have sincerely believed that appellant would carry out his threats of death, thus intimidating her from divulging the incidents.

Appellant further insists that the failure of Maribel Halino to take any concrete steps against him, despite her suspicion that something questionable happened between appellant and Marites, meant that in reality nothing actually happened. The records show otherwise. It appears that on September 1, 1990, Maribel Halino noticed that Marites was missing, so she called for the latter. She then saw appellant coming down the stairs with Marites following him. Marites appeared to be trembling and she looked afraid of something. Maribel immediately asked appellant what he did to Marites. Having gotten a negative response from appellant, Maribel confronted Marites but the child was too afraid to talk. Sensing that something wrong had taken place but having no evidence to back up such suspicion, she wrote to the child's mother who at that time was working in Hongkong, prompting the latter to return to the Philippines.[24]

In his bid for a reversal, appellant raised the discredited defense of alibi. He testified that at five o'clock in the afternoon of August 28, 1990, he was at Altura, Sampaloc, Manila, having followed his common-law wife there after a quarrel. He supposedly stayed there for two weeks. However, it must be noted that complainant declared that in the afternoon of that date, she was raped for the first time by appellant, without specifically mentioning the time of said incident. It was then completely possible for the first rape to have been committed prior to five o'clock that afternoon. Appellant, however, made no explanation whatsoever as to where he was that afternoon, aside from his supposedly being with his common-law wife at a later hour thereof.

At any rate, suffice it to state that Altura, Sampaloc, Manila, where he claims to have been at the time the five acts of rape were committed, is not so far away from Marville Subdivision, Pasig where the incidents happened. Alibi, as we have interminably declared from time to time, is inherently a weak defense and, to be given credence, it must be shown by clear and convincing evidence that it was physically impossible for him to be at the scene of the crime at the time of its commission.[25] Significantly, appellant failed to present his common-law wife to bolster or even to just corroborate his defense of alibi. As we have held, such failure to present witnesses to sustain his alibi is fatal for appellant.[26]

Appellant asserts that the alternative circumstance of relationship was never proven, hence it could not be considered as an aggravating circumstance in the case at bar. It appears that the certificate of live birth of Marites Sayat, although marked as Exhibit "F" was not formally offered in evidence. Said document, therefore, cannot be taken into account by the Court.

The identification of documentary evidence is different from its formal offer. The first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit; the second is made when the party rests his case. The mere fact that a particular document is identified and marked as exhibit does not mean that it will be or has been offered as part of the evidence of the party.[27] The party may decide to formally offer it if he believes this will advance his cause, but then, again, he may decide not to do so at all.[28] Appellant, therefore, is correct in his assertion that the alternative circumstance of relationship between him and the victim can not be proved by said document which was not submitted in court.

Unfortunately for said appellant, however, the victim unequivocally testified that he is actually her half-brother

('kapatid sa ama'),[29] and said declaration was never successfully refuted. Section 40, Rule 130 of the Rules of Court provides that the reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives.[30]

Declarations as to pedigree may not ordinarily be proved by hearsay evidence or by affidavit; but except for evidence of reputation which usually is limited to members of the family, any competent witness, including the person to whom the declaration relates, may testify thereto. It has been held proper for one to testify to facts of family history which relate to him, such as the identity of his parents or other relatives or the place of his birth or his age.[31] Parenthetically, it will be observed that Marites and appellant bear the same family name "Sayat."

In sum, we find no compelling reason to disturb the factual findings and adjudicative conclusion of the trial court. However, in line with the present jurisprudential policy whenever the crime of rape is attended by circumstances which indicate greater perversity on the part of the offender, the Court hereby increases the award of moral damages to P50,000.00 for the complainant and her family.[32]

ON THE FOREGOING PREMISES, except for the aforestated increased award of P50,000.00 which accused-appellant Godofredo Sayat is ordered to pay, the judgment appealed from is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Nocon, JJ., concur.

[1] Original Record, 106-107.

[2] Ibid., 114.

[3] Appellant's Brief, 1; Rollo, 34.

[4] Appellee's Brief, 3-8; Rollo, 70-75.

[5] TSN, August 12, 1991, 2-3.

[6] Ibid., September 6, 1991, 26.

[7] People vs. Pizarro, 211 SCRA 325 (1992).

[8] People vs. Race, Jr., 212 SCRA 90 (1992).

[9] People vs. Bacani, 181 SCRA 393 (1990).

[10] People vs. Mangalino, 182 SCRA 329 (1990).

[11] People vs. Abuyan, 211 SCRA 662 (1992).

[12] People vs. Atilano, 204 SCRA 278 (1991).

[13] TSN, May 28, 1991, 7.

[14] Appellee's Brief, 11-12; Rollo, 78-79.

[15] People vs. Magaluna, 205 SCRA 266 (1992).

- [16] TSN, May 28, 1991, 4-5, 7.
- [17] *People vs. Barcelona*, 191 SCRA 100 (1990).
- [18] TSN, September 6, 1991, 26.
- [19] *People vs. Dolores*, 188 SCRA 660 (1990).
- [20] TSN, June 19, 1991, 15.
- [21] *People vs. Banayo*, 195 SCRA 543 (1991).
- [22] *People vs. Yagong*, 181 SCRA 479 (1990); *People vs. Arroyo, et al.*, 201 SCRA 616 (1991).
- [23] *People vs. Raptus*, 198 SCRA 425 (1991).
- [24] TSN, June 19, 1990, 15-16.
- [25] *People vs. Madrid*, 210 SCRA 196 (1992).
- [26] *People vs. Paciente*, 210 SCRA 86 (1992).
- [27] *People vs. Santito, Jr., et al.*, 201 SCRA 87 (1991).
- [28] *Interpacific Transit, Inc. vs. Aviles*, 186 SCRA 385 (1990).
- [29] TSN, May 28, 1991, 2.
- [30] Sec. 39, Rule 130, Rules of Court.
- [31] 31A C.J.S., Evidence, 226.
- [32] *People vs. Alegado*, 201 SCRA 37 (1991); *People vs. Guibao*, G.R. No. 93517, January 15, 1993.

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