

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PHILIP C. TAN, JR., ACCUSED-APPELLANT.

G.R. Nos. 103134-40. November 20, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Before us is another tragic desecration of human dignity committed no less upon a child on the verge of womanhood, perpetrated by her very own stepfather and inflicted thru seven (7) abominable non-consensual acts of sex called rape.

Based on complaints filed by 16-year old complainant Annabelle Degay assisted by her mother Filomena Tan, wife of appellant Philip Tan, Jr., the latter was charged in fifteen (15) separate informations for raping complainant, appellant's own stepdaughter.[1] These informations contained identical language except as to the dates of the rape incidents as well as the means employed by appellant. Ten (10) of these informations used the phrase "by the use of the knife." The rest used the phrase "while she was then in a state of unconsciousness as she was soundly sleeping." Said informations read as follows:

"That on or about (the dates) at Lubas, Municipality of La Trinidad, Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the stepfather and even adopter of the herein complainant and offended party, (by means of force, violence, intimidation, and by the use of a knife or while she was then in a state of unconsciousness as she was soundly sleeping,) willfully, unlawfully and feloniously succeeded in having carnal knowledge or sexual intercourse with said complainant and offended party Annabelle Degay y Salioan against her will.

"That, in the commission of the offense, the aggravating circumstance of relationship is present, the accused being the stepfather and adopter of the offended party. Also, the aggravating circumstance of nighttime is present as the accused committed this offense during the night to facilitate its accomplishment."[2] (*Italics ours*)

When arraigned, appellant pleaded not guilty. After trial, the Regional Trial Court (RTC) of Benguet convicted appellant of seven (7) counts of rape committed on the nights of July 12, 13, 25, 28, 29 and August 7 and 11 of 1989 upon the person of complainant. The dispositive portion of the judgment of conviction states:

"WHEREFORE, the accused Philip C. Tan, Jr. is hereby found guilty beyond reasonable doubt of the crimes of rape on seven (7) counts under Criminal Cases Nos. 89-CR-0724, -0725, -0730, -0732, -0733, -0734, and -0738, as defined and penalized under Article 335 of the Revised Penal Code, and taking into account the attendance of two aggravating circumstances, the said accused is hereby sentenced to suffer the maximum allowable penalty of seven (7) successive imprisonments of reclusion perpetua, and to indemnify the complainant, Annabelle Degay in the amount of P100,000.00; and to pay costs; however, said accused is hereby found not guilty of the crimes charged in Criminal Cases Nos. 89-CR-0726, -0727, -0728, -0729, -0731, -0735, -0736, and -0737 for lack of evidence.

SO ORDERED."[3]

Appellant directly appeals his conviction to this Court arguing that the trial court erred in giving credence to the testimony of prosecution witness and in finding him guilty beyond reasonable doubt of 7 counts of rape.

The factual milieu of the 15 charges as stated in the respective briefs of both appellant and appellee which are materially and substantially patterned from the factual findings of the trial court, ably supports the conclusion that appellant's conviction is indeed based on proof beyond reasonable doubt. We quote with approval the "Counterstatement of Facts" from the Solicitor-General's Brief,[4] the same being supported by evidence on the record:

"Annabelle Degay, the daughter of Felomina Tan by another man, was three (3) years old when Felomina married on July 12, 1976 appellant Philip Tan, a widower with four children by his first wife (October 23, 1989, tsn, pp. 4). The appellant, whom Annabelle considered as her real father, was a carpenter by profession and Felomina, a weaver at Narda's Handicraft in La Trinidad, Benguet, with working hours that consisted of two shifts that alternated every two weeks: one shift from 4:00 p.m. to 12:00 midnight, and the other from 7:00 a.m. to 4:00 p.m. (Ibid., tsn, pp. 8-10).

"Annabelle was a sixteen year-old high school student at the San Jose High School in Poblacion, La Trinidad, Benguet, at the time of the rape incidents (Ibid., tsn, p. 11).

"Around 7:00 o'clock in the evening of July 12, 1989, Annabelle was at home in Lubas, km. 5, La Trinidad, Benguet, together with her stepsisters Jennifer (21 years old), Annalyn (14) her half sister Emily (daughter of appellant and Annabelle's mother) and appellant, Philip Tan, Jr. The mother of Annabelle, Felomina, was then on a night shift duty. After dinner, Annabelle and her stepsister Jennifer, upon appellant's orders, massaged him as they usually did every night, for about an hour and a half; appellant was lying down, wearing only his briefs, and in this position, they would see his penis and he would let his feet touch Annabelle's and Jennifer's private parts (Ibid., tsn, pp. 10-13). After they had massaged all parts of appellant's body, Annabelle and Jennifer were ordered by appellant to go to sleep (Ibid., tsn, p. 15).

"Annabelle, Jennifer, Annalyn and Emily all occupied one of the three rooms in the house. Jennifer and Emily slept on the bed, while Annabelle and Annalyn slept on the floor (Ibid., tsn, p. 15). On that particular night the lights in the house were out as the main switch was shut off from the master's bedroom occupied by the appellant (Ibid., tsn, p. 17). After about thirty minutes, Annabelle noticed the appellant enter their room (Ibid., p. 18). He slowly went near his stepdaughter Annabelle and embraced her, uttering, "It is cold." While uttering this, he forced Annabelle to take off her blanket (Ibid.). Wondering what her stepfather was trying to do and what his intentions were, Annabelle tried to fight back by struggling and kicking him; he was then in a straddling position. But he slapped her, pointed a kitchen knife on her right side, and boxed her thigh when she continued resisting (Ibid., pp. 19-22). It was at this point that Annabelle shouted at her stepsisters Jennifer and Annalyn to wake and help her. But no help was forthcoming from her stepsisters, however because Jennifer, though awake (as she could easily be awakened), pretended to be asleep (Ibid., tsn, p. 22).

"Annabelle continued struggling when appellant finally boxed her in the stomach, causing her to lose consciousness (Ibid., tsn, pp. 23-26). Annabelle started to fight back again, struggling until such time when appellant stood up and left the room (Ibid., tsn, p. 20). Annabelle, in tears, followed her stepfather, and in her anger, attempted to hit him. When she asked him why he did the bestial act to her, appellant replied, "Ay-ayam ngarud" (It's just a game) (Ibid., tsn, p. 27).

"Annabelle immediately took a bath in the bathroom and as she washed herself, she noticed blood and white slippery fluid flowing out from her vagina (Ibid., tsn, p. 30). When she came out of the comfort room, she saw the appellant looking at her and smiling. Scared, Annabelle ran to her room (Ibid., tsn, p. 31). She then changed her panty and clothes and cried (Ibid., tsn, pp. 31-32). Thereafter, she fell asleep.

"Annabelle woke up at 5:30 in the morning the following day, July 13, 1989, and started to cook rice. About

fifteen (15) minutes later, appellant also woke up and went to her, warning that he would kill her and her mother should she tell the latter what happened between them (Ibid., tsn, p. 33). This scared Annabelle to no end because she knew that appellant was capable of maltreating her and her mother (Ibid.). Her stepsisters, too, when they woke up, acted as if nothing had happened the previous night (Ibid., tsn, p. 34). It was her mother, Felomina (who had returned at 2:00 o'clock in the morning from her night shift duty) who woke up and inquired why she had been crying the whole night and why there were lumps on her head. Annabelle did not say anything. Because of her silence, Felomina presumed that this was caused by appellant's having made unpleasant remarks at Annabelle again, or maybe had scolded or physically hurt her (January 23, 1990, tsn, p. 6).

"Annabelle did not go to school that day because her body was in pain, and she could not concentrate anyway (October 24, 1989, tsn, p. 38).

"In the evening of July 13, 1989, Felomina again worked on the night shift at the Narda's when after having dinner, appellant called Jennifer and Annabelle to massage him. After having massaged him for about an hour, Annabelle and Jennifer proceeded to study their lessons while awaiting the arrival of Felomina. Appellant, however, ordered them to go to sleep (October 24, 1989, tsn, pp. 38-39).

"Around 10:00 o'clock, appellant opened the door of their room. Annabelle vainly tried to push the trunk of the door but appellant was able to get in. When she tried to awaken Annalyn who was sleeping beside her, appellant pushed her face to the floor (Ibid., tsn, p. 40). He then held Annabelle's hand and told her that they already did it before anyway (Ibid.). All of a sudden, appellant got hold of her hair and pushed her face to the floor (p. 40). Appellant then knelt down, rode on her back and bumped her head several times on the floor (Ibid., tsn, p. 40.). Annabelle tried to face him so she could fight back but appellant pulled her legs straight such that she fell on her back (Ibid., tsn, p. 41). Finally, to keep her still, appellant boxed Annabelle's stomach, which rendered her unconscious (Ibid., p. 42). When she regained consciousness, Annabelle found herself naked and again, white slippery fluid was flowing out of her vagina. By then appellant was no longer inside the room (Ibid., tsn, p. 42).

"Later that night, Annabelle opened the door for her mother who arrived from work. Felomina had noticed that her daughter had been crying, but when she inquired as to the reason why, Annabelle, who had borne in mind her stepfather's threats, just keep silent. Thereafter, Annabelle went to the comfort room to wash (Ibid., tsn, pp. 43-44).

"In the evening of July 15, 1989 appellant drank liquor with his friends in the house (Ibid., p. 49). When his friends left, they ate supper and thereafter, Annabelle and Annalyn massaged him (Ibid., tsn, p. 50). Afterwards, when they went to study, appellant ordered them to go sleep. Not long thereafter, appellant entered their room. Annabelle attempted to block the door but appellant was able to enter by force (Ibid., tsn, pp. 50-51). At this juncture, Annabelle screamed which prompted Jennifer to inquire from her "Daddy" what he was doing. At this point, Annabelle embraced Annalyn but appellant pulled her and slapped her face. Then he left (Ibid., tsn, p. 51).

"In the evening of July 25, 1989, when Felomina worked on the night shift from 4:00 p.m. to 12:00 midnight, appellant entered Annabelle's room and boxed her several times until she felt weak. Then, he removed her pants, t-shirt and panty, and pushed her to the floor. He then removed his underwear and started mashing her breasts and kissing her. She could only struggle and push and kick him, but to no avail. Appellant was able to successfully insert his penis into her vagina. After having performed this bestial act on his stepdaughter, appellant proceeded to his own room. Annabelle noticed that while slippery fluid again flowed from her vagina (Ibid., tsn, pp. 56-60).

"On July 28, 1989, after he was massaged, appellant ordered Annalyn to buy milk. When she returned, appellant ordered her and Emily to go to sleep (Ibid., tsn, pp. 60-62). Thereafter, appellant prepared milk for himself, Jennifer and Annabelle. Annabelle noticed, however, that the glass of milk that was prepared for her

tasted bitter such that she requested Jennifer to exchange her milk with hers. She was prevented from doing so by the appellant, however. Thus, she pretended to drink the milk since she intended to throw it away later. When she tried to do so, however, appellant scolded her and threatened that if she threw it, something ill would happen to her (Ibid., tsn, p. 62). Because of the threat, she was forced to drink the milk; she fell asleep soon thereafter (Ibid., tsn, p. 63). When she woke up, she realized that appellant had sexual intercourse with her for she found herself naked and noticed that her vagina was slippery again (Ibid., tsn, pp. 63-64). She immediately stood up to wash herself in the bathroom. When she returned to her bedroom she could not sleep anymore (Ibid., tsn, p. 64). The following day, much as she wanted to finally tell her mother (who again asked her why she had bruises on her face and head) what had happened to her, she never attempted to do so for she did not know how (October 24, 1989, tsn, pp. 65-66).

"In the evening of July 29, 1989, the appellant and his friends had a drinking spree inside their house (Ibid., tsn, pp. 68-69). When his friends left, appellant entered the room which Annabelle was sharing with his stepsisters (Ibid., tsn, p. 69). She tried in vain to stop the appellant from coming inside by pushing the door against him (Ibid.). When he was able to enter, appellant immediately embraced her tightly such that her efforts to kick him were to no avail. Irritated by her struggles, appellant hit Annabelle's head and boxed the right side of her stomach, causing her to lose consciousness (Ibid., tsn, p. 69). When she regained consciousness, she was already naked and her pants and panty were at the floor near her feet. White slippery fluid was also flowing from her vagina. (Ibid., tsn, pp. 69-70; October 30, 1989, p. 3).

"On August 7, 1989, Felomina again worked on night duty. When supper was prepared, appellant volunteered to cook the shrimps which he had bought earlier. The viand was bitter but appellant forced Annabelle to eat it (Oct. 30, 1989, tsn, pp. 4-5). Thereafter, they were ordered to immediately to go to sleep (Ibid., tsn, p. 5). Instead of going to sleep, Annabelle went to the toiler to wash her clothes. Appellant, however, knocked at the door and ordered her to go to sleep (Ibid., tsn, p. 5). Annabelle complied since she also became sleepy, but instead of sleeping at her usual space on the floor, she slept on top of the trunk near the place where their clothes were hanged (Ibid., tsn, pp. 5-6). Later, appellant entered the room but not finding her on the floor, he switched on the light. Appellant got mad when he saw Annabelle sleeping on top of the trunk and demanded why she had to sleep there (Ibid., tsn, p. 7). As she meekly stood up, appellant immediately embraced Annabelle (Ibid.). She struggled to resist his advances but appellant pushed her head to the floor, causing her to lose consciousness. Appellant, thus, succeeded in having carnal knowledge of her (Ibid., tsn, pp. 7-9).

"Again, on August 11, at 9:30 p.m., appellant entered Annabelle's room while she and her stepsisters were sleeping. She woke up when appellant had removed her blanket and was embracing her. She kicked him, but he boxed her many times and hit her head on the floor, causing her to lose consciousness. When she recovered, she saw him about to stand up. He then told her that he was already through with his bestial act. Then she realized that she was already naked, and white slippery fluid was also coming out from her vagina (Ibid., tsn, pp. 16-17).

"She woke up at 5:00 o'clock the following morning (August 12, 1989) and then proceeded to the bathroom to wash. After eating breakfast, she again went inside the bathroom and while inside, her mother knocked at the door, asking why she had been crying. Finally this time, gathering enough courage, she told her mother everything that appellant had been doing to her. They both cried and embraced each other. Then her mother instructed her to collect all her clothes so that they could look for a place where they could stay. When they could not find a place at kms. 5 and 6, Annabelle volunteered to stay with her Manang Grace at Magsaysay Avenue, Baguio City (October 30, 1990, tsn, pp. 17-18).

"Felomina went on leave of absence from her work on the evening of August 12, 1989 and went home. Before the arrival of her husband, she slept in the room of her children, at the floor which used to be occupied by Annabelle. Around 3:20 in the morning, appellant entered the room and held her legs, thinking that it was Annabelle whom he was holding. Appellant was surprised when it was Felomina who suddenly rose. Appellant exclaimed "Why are you here? where is Annabelle?" Felomina retorted that he should stop raping her daughter

(January 23, 1990, tsn, pp. 12-14).

"Having confirmed that her husband had really raped her daughter, Felomina sought the help of the barangay captain in the morning of August 13, 1989. The barangay captain advised her, however, to report the matter to the municipal hall since it involved a serious case (Ibid., tsn, p. 16). But ashamed of what her husband had done, Felomina hesitated on reporting the matter to the police. Finally, on August 21, 1989, the cry of justice for her defied daughter prevailed over whatever love she had for her rapist of a husband; she and Annabelle reported to the police the rape incidents (Ibid., tsn, pp. 16-17).

"On August 21, 1989, Annabelle Degay was brought by her mother and other relatives to the Benguet General Hospital for physical examination. Dr. Susan Chungalao who conducted the medical examination prepared the Medico-Legal Certificate (Exhibit "A"), indicating the following findings upon internal examination:

- nulliparous
- Vagina admits 2 fingers with slight difficulty
- hymen with old healed lacerations at 5 o'clock, 7 o'clock and 12 o'clock positions
- cervix - firm and close
- uterus - small
- no bleeding at time of examination

(Exhibit "A").

Dr. Chungalao also confirmed that Annabelle could have been raped several times (Ibid.). [NOTE: "Sic" was not inserted in order not to clutter the narration. (*Italics ours*)].

For his defense, appellant denied the charges of rape. He also contended that it was impossible for him to commit the salacious acts given the circumstance and place where the crimes were committed. He argued that the room was small (2 meters and 32 cm by 2 meters and 32 cm)[5] and that complainant's stepsisters Jennifer (21) and Annalyn (14)[6] as well as complainant's half-sister Emily (12)[7] who were all sleeping in the same room could have been easily awakened when complainant allegedly shouted at the top of her voice and vigorously struggled against appellant's advances, had the same been true.

The gravamen of the offense of rape is sexual intercourse without consent. The medical certificate showed lacerations in complainant's private parts indicating there was sexual intercourse. Likewise, the convincing testimony of complainant indicates that she was forced by appellant to submit to his deplorable lust. In consummating this innate desire, he employed force and intimidation by boxing and hitting complainant on her stomach and legs. Weakened by the physical blows and with a knife pointed at her, she became helpless. Appellant eventually succeeded in performing his maniacal desires which was repeated six more times. On two occasions, she became unconscious after eating and drinking the "bitter" food and milk forced upon her by appellant. When she regained consciousness she found herself naked and with "white slippery fluid going out of her vagina." Appellant even told her that he had just finished doing "it" again.

The pattern of complainant's behaviour, after the sexual assault is indicative of her resistance to appellant's monstrous acts. On one occasion, she washed clothes at the late hour of the evening just to resist the effect of the bitter food, aware that once she loses consciousness, appellant will try to rape her again. She even slept on top of the trunk, which is not the usual place where she sleeps to prevent appellant from finding her. Upon discovering this, appellant got angry and was not able to satisfy his lust on that night.

Appellant's contention that the room was small cannot exculpate him from his barbaric acts. There is also no merit in his assertion that complainant's sisters, who were sleeping beside her would have been awakened by

complainant's shouting and struggling while being ravished. It is "not impossible nor incredible for the members of the complainant's family to be in deep slumber and not be awakened"[8] while the brutish sexual assault on her was being committed. Lust is no respecter of time and place.[9] Several times, the Court has held that rape can be committed even in places where people congregate, in parks along the roadsides, in school premises, in a house where there are other occupants,[10] in the same room where other members of the family are also sleeping,[11] and even in places which to many, would appear unlikely and high risk venues for its commission.[12] Besides, there is no rule that rape can be committed only in seclusion.[13]

Moreover, the passive behaviour of complainant's sister during those dark nights is not difficult to comprehend if we are to consider appellant's character and treatment of his family. Nestor Tan testifying for his father, confirmed complainant's and her mother's testimony that appellant is very strict and "nauuyong" (cranky),[14] that appellant maltreats his family, that he throws things at them and that he slaps them.[15] Worse, appellant even requires the 21-year old Jennifer and the 16-year old complainant to massage his whole body for almost an hour every night while he was scantily clad only in his briefs where his daughters would see his penis.[16] Not satisfied with that, appellant "would even try to let his feet touched (sic)" her daughters' (including complainant's) private parts."[17] As aptly observed by the trial court:

"x x x From these acts and behaviour of the accused Phillip Tan towards the members of his family, including herein private complainant and her mother, the accused had established moral and physical dominance over each member of the family, such that none would dare stand up against him, much less the herein complainant who, from her demeanor in Court, appeared to be a very timid, very shy, and very frightened young woman whose voice, while testifying, often could hardly be heard. x x x Also the regular whole-body massages performed on the almost naked accused by complainant and Jennifer Tan has had the effect of brainwashing and conditioning the minds of his children that there was nothing morally wrong with the practice, that it was part of the discipline that the accused imposed on them and that it was part of the duties that the members of the family, particularly Annabelle the complainant, to the accused Philip Tan, their lord and master who gives them food, shelter and clothing. More, with respect to complainant Annabelle Degay, whose status of being a bastard without any father was constantly being hammered in her head by the accused, and who had been made to understand that she is taken in the house of the accused under the latter's full support and protection, she must have been reduced in her mind to the status of one no better than a slave for the accused to treat and dispose of as nothing but a chattel. On the part of her step-sisters, this attitude of the accused, must have convinced them that Annabelle is a second-class sister. They are convinced that what their father was doing to her was an acceptable act of imposing authority on and exacting recompense on Annabelle for being taken in as member of the family.

"x x x It is not unbelievable that these three (3) young natural daughters of the accused would just accept the situation and the actuation of their father during the nights of the repeated commission of rape as part of their father's exacting discipline on the illegitimate bastard, Annabelle Degay, much as they may have viewed the almost daily ritual of naked body massage as part of the discipline imposed upon them by the accused and as a way or repaying him for his support and protection. x x x."[18] (italics ours).

Appellant also assails complainant's credibility by pointing out: that the latter, in her sworn statement[19] as well as during the preliminary investigation said that she was raped 15 times whereas her testimony in court revealed only seven (7) instances of sexual intercourse; that she failed to immediately report the incidents to her mother or to the authorities; and that she was only concocting the rape charges as a form of revenge against the "strictness" of appellant.

The imputed inconsistency in the dates when the separate acts of rape were committed was thoroughly explained by complainant during cross-examination:

"Atty. Reyes: I invite your attention to No. 5. How many times did he rape you and your answer is about 15 times in the month of July whenever my mother worked at Narda's, is that correct?

A:

They asked me how many times my mother worked during nighttime, they see the record and that is what they placed there.

Court:

What record did they see?

A:

The attendance of my mother, sir.

Q:

You mean the record of Narda's where she worked, the policemen verified the dates when your mother was supposed to be at Narda's working, is that what you mean?

A:

Yes, sir.

Q:

I invite your attention to question no. 6. How about in the month of August, how many times did your stepfather raped you and your answer is, my stepfather - from August 7 to 11, 1989, is your statement correct?

A:

They asked the date when I left the house and I said August 11 and they verified the record of my mother and they found out that she worked in the evening from August 7 to August 11.

xxx xxx xxx

Q:

So, this Exhibit "C" now, what you told to the police is not true?

A:

Some are not true.

Q:

So, some are not true?

A:

Only the dates are not true.

xxx xxx xxx

Court:

Let us see now, what is the basis of the Police authorities in basing the frequency of the alleged rape?

A:

On the attendance record of my mother at Narda's. Sir, they asked when Philip Tan raped me and I said, during the times that mother was working at night." [20] (*italics ours*)

Thus, it was the police investigator, not the complainant, who concluded that the latter was raped 15 times, based on her statement that the same occurred whenever her mother goes to work on a night shift. Complainant was not therefore inconsistent. In any case, variances between affidavit and court testimony do not by themselves affect credibility. [21]

Assuming *arguendo* that there was really an inconsistency, the same pertains only to a minor and trivial detail [22] not touching on the *why's* and *wherefore's* of the crime [23] which strengthened rather than diminished complainant's credibility [24] as they erased suspicion of a rehearsed testimony. [25] As the Court said in *People v. Barranco*, [26] "*ang isang saksi na ang pahayag ay may kaunting pagkakamali ang karaniwang nagsasabi ng katotohanan.*" Besides, errorless testimony cannot be expected of a rape victim [27] for she may not be able to remember and recount every ugly detail of the harrowing experience and appalling outrage, especially so since she might in fact be trying not to remember them, [28] as they are painful to recall. [29]

The failure of complainant to reveal to her mother appellant's deprave acts is not indicative of fabricated charges. As held in one case: [30]

"Many victims of rape never complain or file criminal charges against their rapists. They prefer to bear the ignominy and pain rather than reveal their shame to the world or risk rapist's making good their threats to kill or hurt their victims." [31]

Complainant is in the same situation. Her shame and genuine fear of what appellant might do to her mother, [32] aware of appellant's capacity to hurt them, had temporarily sealed her lips. Her silence was impelled by both fear for her life and shame for the degradation that had befallen her. It is not uncommon for a young girl at tender age of 16 years to be intimidated into silence and conceal for sometime the violation of her honor, even by the mildest threat against her life. [33] Rape victims do not always immediately go to the rooftop and denounce their assailants. Silence is not an odd behaviour of a rape victim. [34] As explained in some studies, [35] this "natural reticence or aversion of the victims to reveal the humiliation attaching to the crime," is a "stigma they will have to bear indefinitely thereafter." The fear of these young victims of reprisals upon them or their families easily cows them into submission and silence. [36] Worse, in incestuous rapes, that fear which compels non-revelation is further reinforced by the moral ascendancy of the rapist over his ravished relative. [37] Appellant, as complainant's stepfather, whom she even called "Daddy", had assumed parental authority over her during her formative years. Clearly he exerts strong moral influence and ascendancy over complainant. [38]

There is also no merit in appellant's argument that complainant's credibility is questionable she was allegedly motivated by revenge in concocting the rapes. As recently held in *People v. Acabo* [39] and as consistently ruled by the Court, when the issue boils down to the credibility of witness, settled is the rule that the trial court's assessments thereon are accorded with great respect unless it overlooked or misapplied some facts which would have affected the result of the case. [40] The trial court, giving full faith and credence to complainant's testimony found the latter to be "very timid, very shy and very frightened young woman whose voice, while testifying, often could (*sic*) hardly be heard". [41] It even observed that she is "unsophisticated, submissive, subservient, and cowed young woman who obviously is (*sic*) suffering from extreme inferiority complex and lack of self-esteem". [42] Undoubtedly, no cogent reason was shown that would justify departure from the lower court's assessments and findings. [43] The rationale for this is the trial court's unique position of having observed that elusive and incommunicable evidence of the witness' deportment on the stand and manner of testifying during trial, which is denied to appellate court. [44]

It is highly unlikely that complainant, a "16-year old high school student of a religious school, presumably a virgin, an innocent and unsophisticated Igorota native"[45] unexposed to the ways of the world, would concoct a reprehensible story of defloration, no less than against her stepfather, allow an examination of her private parts and then subject herself to the rigors, trouble, inconvenience, ridicule and scandal of a public trial, where she has to bare her harrowing and traumatic experience, and be subjected to harassment, embarrassment and humiliation during cross-examination, unless she was in fact raped and deeply motivated by her sincere desire to do so solely to seek justice and obtain redress for the unforgivable and wicked acts committed upon her.[46] At the risk of being tautological, this Court has repeatedly ruled that no young and decent Filipina would publicly admit that she was ravished unless that is the truth for it is her natural instinct to protect her honor.[47]

Complainant's tender age, further lends to her credibility.[48] Thus:

"Apparent from the Court's decisions in rape cases with the offended parties being young and immature girls from the ages of twelve to sixteen, x x x is (the) considerable receptivity on the part of this Tribunal to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to. This is not to say that an uncritical acceptance should be the rule. It is only to emphasize that skepticism should be kept under control."[49]

A victim who cries rape almost always says all that has to be said.[50] The "avalanche of intimate revelations from a daughter to a mother", the latter "torn between her love and loyalty for her husband and love for her own daughter"[51] was impelled to test the truth of complainant's revelations. She (complainant's mother) did not report to her night work. Instead, she lay on the very same spot where complainants sleeps at night. At 3:20 a.m., what would have been another nightmare began.[52] Appellant entered the room. Despite the darkness, he reached the spot where complainant sleeps with familiar ease, thinking that the latter was there. Instead, appellant was surprised to find his wife who confronted him. The latter, of course, denied the accusation. And when charged before the court, he prefaced such denial with the assertion that he treated the victim as his own child[53] and that he was even giving her financial and material support.[54]

Suffice it to say that such arguments are clearly non-sequitur, and that denial is inherently a weak defense which cannot prevail over positive identifications.[55] Moreover, affirmative testimony, like that of complainant's, is stronger than the negative one.[56]

The rape charges against appellant were committed with the aggravating circumstance of nighttime[57] which as found by the trial court and as proven by the prosecution, appellant chose in order to facilitate the accomplishment of his criminal design. Also attendant is the aggravating circumstance of relationship between stepdaughter and stepfather.[58]

The penalty for each act of rape through the use of a deadly weapon (knife),[59] is reclusion perpetua, notwithstanding the attendance of any mitigating or other aggravating circumstance.[60] As appropriately put in the vernacular by our distinguished colleague, Madame Justice Flerida Ruth Romero:

"Ang pagwasak sa puri ng isang nagdadalaga na walang kamalaymalay sa kamunduhan ay gawa ng isang halimaw na narapat lamang na patawan ng kaukulang kaparusahan ng mga hukuman ng ating lipunan.[61] (Italics ours.)

Although we uphold appellant's convictions, we take exception to the monetary award. The case at bar involves the "rape committed on a very young girl who has been further denied thereby of her right to grow up and discover the wonders of womanhood in the normal way. x x x (U)ncompromising judicial sanctions should stem the growing tide of paraphilia[62] that seeks the youth for its victims, leaving inevitable traumatic and

psychological scars on their young and innocent lives." [63] Thus, contrary to what appellant thought, rape is not a mere "ay-ayam ngarud" [64] (a game) where victims are left helpless and eternally scarred. Conformably, the P100,000.00 awarded by the trial court to complainant, should be raised to P350,000.00 as per recent rulings awarding P50,000.00 [65] for each [66] crime of rape.

WHEREFORE, the instant appeal is DISMISSED and the decision of Branch 8 of the Regional Trial Court of La Trinidad, Benguet, in Criminal Cases 89-CR-0724, 89-CR-0725, 89-CR-0730, 89-CR-0732, 89-CR-0733, 89-CR-0734, and 89-CR-0738 finding appellant Philip Tan, Jr. guilty beyond reasonable doubt of rape in seven (7) counts attended by two (2) aggravating circumstances and sentencing him to suffer seven (7) reclusion perpetuas is AFFIRMED subject to the modification that appellant shall pay complainant an indemnity of P350,000.00 (P50,000.00 for each count of rape) and to pay the costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] On July 10, 1989 or two days before the first sexual assault, appellant filed an adoption proceeding to adopt complainant. However, appellant was not aware if the same was approved or not. (TSN, Philip Tan, Jr., March 19, 1990, p. 13).

[2] Rollo, p. 32.

[3] RTC decision dated February 26, 1991 penned by Judge Nicodemo T. Ferrer, p. 21; rollo, p. 52.

[4] Brief for the Appellee prepared by the Solicitor-General, pp. 4-19; rollo, pp. 126-141.

[5] Rollo, p. 100; TSN, Ocular Inspection, March 26, 1990, p. 2.

[6] Jennifer and Analyn Tan are two of appellant's four (4) natural children with another woman before he married complainant's mother. The other two children being Nelson and Philip, Jr.

[7] Emily is the daughter of appellant by complainant's mother.

[8] *People v. Cura*, 310 Phil. 237, 247 (1995) citing *People v. Dabon*, 216 SCRA 656.

[9] *People v. Dones*, G.R. No. 108743, March 13, 1996; *People v. Remoto*, 314 Phil. 432, 448 (1995); *People v. Segundo*, 228 SCRA 691 (1993); *People v. Codilla*, 224 SCRA 104; *People v. Guibao*, 217 SCRA 64, 74 (1993).

[10] *People v. Remoto*, supra; *People v. Ulili*, 44 SCAD 213 or 225 SCRA 594 (1993); *People v. de los Reyes*, 203 SCRA 707 (1993); *People v. Viray*, 164 SCRA 135 (1988).

[11] *People v. Villorente*, 210 SCRA 647 (1992).

[12] *People v. Dado*, 314 Phil. 635, 653 (1995); *People v. Rafanan*, 182 SCRA 811

[13] *People v. Papa Talaboc*, G.R. No. 103290, April 23, 1996.

[14] TSNs: Nestor Tan, March 5, 1990, p. 12; Annabelle Degay, October 23, 1989, p. 8; Filomena Tan, February 12, 1990, p. 4.

[15] Rollo, p. 42.

[16] TSN, Annabelle Degay, Ibid., p. 13; Rollo, pp. 42-43.

[17] Ibid.

[18] Rollo, pp. 100-101.

[19] Exh. "1", Exh. "C", Sworn statement of Annabelle Degay; Record, p. 5.

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"Q5: How many times did he rape you?

A: About 15 times in the Month of July whenever my mother work during night time at Narda's.

Q6: How about in the Month of August, how many times did your step-father raped you?

A: My step-father Philip Tan raped me from August 7, 1989 to August 11, 1989." xxx xxx xxx.

[20] TSN, Annabelle Degay, December 5, 1989, pp. 15, 16, 19.

[21] People v. Pastoral, 44 SCAD 604 (1993); People v. Dado, supra.

[22] People v. Ramos, 315 Phil. 435 (1995); People v. Plaza, 312 Phil. 830 (1995).

[23] People v. Custodio, 197 SCRA 538 (1991) and People v. Muñoz, 163 SCRA 780 cited in People v. Tacipit, 312 Phil. 295, 302 (1995).

[24] People v. Briones, Jr., 44 SCAD 1057 (1993).

[25] People v. Español, G.R. No. 105673, April 10, 1996; People v. Padilla, 312 Phil 721 (1995); People v. Ducoy, 225 SCRA 1 (1993); People v. Jumamoy, 221 SCRA 333 (1993); People v. Lase, 219 SCRA 584 (1993).

[26] 177 SCRA 103, 108-109 (1989).

[27] People v. Cura, supra. at 249.

[28] People v. Jimenez, 250 SCRA 349 (1995); People v. Adlawan, 217 SCRA 489 (1993).

[29] People v. Olivar, 215 SCRA 759 (1992); People v. Abuyan, Jr., 211 SCRA 662 (1992).

[30] People v. Cabresos, 314 Phil. 250, 259-260 (1995).

[31] People v. Silfavan, 151 SCRA 617, 629 (1987).

[32] TSN, ibid., p. 12.

[33] People v. Quiñones, 315 Phil. 48 (1995); People v. Manzana, 250 SCRA 152 citing People v. Oydoc, 125 SCRA 250 (1983); People v. Montefalcon, 243 SCRA 617 (1995); People vs. Soan, 243 SCRA 627 (1995); People v. Plaza, 242 SCRA 725 (1995); People v. Errojo, 229 SCRA 49 (1994); People v. Abordo, 224 SCRA 725 (1993); People v. Alib, 222 SCRA 517, 519 (1993);.

[34] People v. Rejano, 237 SCRA 627, 629 (1994).

[35] Paraphrasing Justice Regalado in People v. Jimenez, supra at 357.

[36] Ibid.

[37] Ibid.

[38] See People v. Vitor, 315 Phil. 419, 433 (1995), citing People v. Obejas, 229 SCRA 549 (1994).

[39] G.R. No. 106977, July 17, 1996.

[40] *People v. Padilla*, 312 Phil 721 (1993), citing *People v. Florida*, 214 SCRA 227 (1992) and *People v. Matrimonio*, 215 SCRA 613 (1992); *People v. Codilla*, 224 SCRA 104 (1993); *People v. Dio*, 44 SCAD 559 (1993).

[41] RTC Decision, p. 12; Rollo, p. 101.

[42] *Ibid.*, p. 18; Rollo, p. 107.

[43] *US v. Macuti*, 26 Phil. 170 (1913); *People v. Kyamko*, 222 SCRA 183 (1993).

[44] See *People v. Cura*, *supra*, and *People v. Dado*, 314 Phil. 635 (1995).

[45] Rollo, p. 109.

[46] *People v. Echegaray*, G.R. No. 117472, June 25, 1996, citing *People v. Espinoza*, 247 SCRA 66 (1995); *People v. Sanchez*, 250 SCRA 14 (1995); *People v. Godoy*, 250 SCRA 676 (1995); *People v. Magpayo*, 226 SCRA 13 (1993); *People v. Tismo*, 204 SCRA 535 (1991); *People v. Saldivia*, 203 SCRA 461 (1991); *People v. Patilan*, 197 SCRA 354 (1991); *People v. Yambao*, 193 SCRA 571 cited in *People v. Dado*, *supra*.

[47] *People v. Gan*, 46 SCRA 667 (1972), *People v. Gamez*, 124 SCRA 260 (1983), *People v. Alcantara*, 126 SCRA 425 (1983); *People v. Ramilo*, 146 SCRA 256 (1986) cited in *People v. De Guzman*, 216 SCRA 754 (1992) and in *People v. Padilla*, 312 Phil. 721 (1995); See also *People v. Dones*, *supra*;

[48] *People v. Digno, Jr.*, 250 SCRA 237 (1995).

[49] *People v. Molina*, 53 SCRA 495, 500-501 (1973), reiterated in *People v. Egot*, 130 SCRA 134 (1984) and in *People v. Quidilla*, 166 SCRA 778 (1988).

[50] *People v. dela Cruz*, 251 SCRA 77 (1995).

[51] Rollo, p. 109.

[52] TSN, Filomena Tan, January 23, 1990, p. 13.

[53] TSN, Philip Tan, Jr., March 19, 1990, p. 16.

[54] *Ibid.*, p. 17.

[55] *People v. Remoto*, *supra*; *People v. Ramos*, 315 Phil. 435 (1995); *People v. Amador*, 226 SCRA 241 (1993); *People v. Ylarde*, 224 SCRA 405 (1993).

[56] This is premised on the reason that the party denying may not exactly remember the circumstance on which he bases his denial. (*People v. Mendoza*, 236 SCRA 666).

[57] Article 14(6) Revised Penal Code; *People v. Moreno*, 220 SCRA 292 (1953).

[58] See *People v. Bersabal*, 48 Phil. 439 where the court found that stepson-stepfather relationship is aggravating.

[59] Art. 335 (Revised Penal code). x x x. Whenever the crime of rape is committed with the use of a deadly weapon x x x the penalty shall be reclusion perpetua. (*italics ours*).

[60] Art. 63 in relation to Art. 335 of the Revised Penal Code. The case at bar may have invited the mandatory application of the supreme penalty of death under Art. 335 as amended by R.A. 7659. However, the amending law

took effect after these rapes occurred.

[61] *People v. de la Cruz*, supra at 79.

[62] Paraphilia refers to the preference or addiction to unusual sexual practices.

[63] *People v. Guibao*, supra., at 75 citing *People v. Quidilla*, 166 SCRA 778 (1998).

[64] TSN, Degay, October 23, 1989, p. 27.

[65] *People v. Papa Talaboc*, supra; *People v. Abendaño*, 312 Phil. 625 (1995); *People v. Sartagoda*, 221 SCRA 251; *People v. Tismo*, 204 SCRA 535; *People v. Alegada*, 201 SCRA 37 (1991); *People v. Calixto*, 193 SCRA 303; *People v. Perez*, 175 SCRA 203 (1989); *People v. Cayaso*, 158 SCRA 586;.

[66] *People v. Esguerra*, G.R. No. 117482, May 8, 1996; *People v. Toledo*, 83 Phil. 777 (1949).

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