

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIETO ADORA, ACCUSED-APPELLANT.

*G.R. Nos. 116528-31. July 14, 1997*

Ponente: PANGANIBAN, J.

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### PANGANIBAN, J.:

In prosecutions for rape resulting in pregnancy, it is not essential to establish the exact date of the fertilization of the egg; forensic experts agree that such exact date is still medically unascertainable. In any event, pregnancy is a non-issue in a criminal prosecution for rape, the essential element of which is the absence of the victim's consent to the sexual congress.

This appeal seeks the reversal of the July 11, 1994 Joint Decision[1] of the Regional Trial Court of Legaspi City, Branch 5, convicting appellant of four (4) counts of rape and sentencing him to four (4) terms of reclusion perpetua.

On December 30, 1992, Complainant Cecilia Cotorno lodged before the National Bureau of Investigation in Legaspi City a complaint for rape against Appellant Marieto Adora.

After preliminary investigation, four separate Informations docketed as Criminal Case Nos. 6128 to 6131 were filed charging appellant with rape. The Information[2] in Criminal Case No. 6128 reads:

“That on or about the 24th day of September, 1992, at more or less 11:00-12:00 midnight, at Brgy. Vega, Municipality of Rapu-Rapu, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and deliberate intent to violate the law, by means of force and intimidation, without the consent and against the will of Cecilla E. Cotorno, did then and there willfully, unlawfully and feloniously have sexual intercourse and succeeded in having carnal knowledge with the latter, to her damage and prejudice.”

In Criminal Case No. 6129:[3]

“That on or about the 1st day of August, 1992, at more or less 2:00 o'clock in the afternoon, at Barangay Vega, Municipality of Rapu-Rapu, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and deliberate intent to violate the law, by means of force and intimidation, without the consent and against the will of Cecilla E. Cotorno, did then and there willfully, unlawfully and feloniously have sexual intercourse and succeeded in having carnal knowledge with the latter, to her damage and prejudice.”

In Criminal Case No. 6130:[4]

“That on or about the 27th day of June, 1992, at more or less 1:00 o'clock in the afternoon, at Barangay Vega, Municipality of Rapu-Rapu, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and deliberate intent to violate the law, by means of force and intimidation, without the consent and against the will of Cecilla E. Cotorno, did then and there willfully, unlawfully and feloniously have sexual intercourse and succeeded in having carnal knowledge with the latter,

to her damage and prejudice.”

In Criminal Case No. 6131:[5]

“That on or about the 25th day of June, 1992, at more or less 8:00 o’clock in the evening, at Barangay Vega, Municipality of Rapu-Rapu, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and deliberate intent to violate the law, by means of force and intimidation, without the consent and against the will of Cecilia E. Cotorino, did then and there willfully, unlawfully and feloniously have sexual intercourse and succeeded in having carnal knowledge with the latter, to her damage and prejudice.”

Upon arraignment,[6] appellant with the assistance of counsel pleaded “not guilty.” The trial court consolidated the four cases and joint trial ensued. On July 11, 1994, the trial court promulgated its assailed Joint Decision, the dispositive portion of which reads:

“WHEREFORE, premises considered, decision is hereby rendered:

1) In Crim. Case No. 6128 finding the accused Marieto Adora GUILTY beyond reasonable doubt of the crime of RAPE as defined and penalized under Art. 335 RPC and hereby sentences him to suffer the penalty of imprisonment of Reclusion Perpetua, to pay complainant Cecilla Cotorino P50,000.00 as moral damages, P20,000.00 as exemplary damages and to pay the costs.

2) In Crim. Case No. 6129 finding the accused Marieto Adora GUILTY beyond reasonable doubt of the crime of RAPE as defined and penalized under Art. 335 RPC and hereby sentences him to suffer the penalty of imprisonment of Reclusion Perpetua, to pay complainant Cecilia Cotorino P50,000.00 as moral damages, P20,000.00 as exemplary damages and to pay the costs.

3) In Crim. Case No. 6130 finding the accused Marieto Adora GUILTY beyond reasonable doubt of the crime of RAPE as defined and penalized under Art. 335 RPC and hereby sentences him to suffer the penalty of imprisonment of Reclusion Perpetua, to pay complainant Cecilla Cotorino P50,000.00 as moral damages, P20,000.00 as exemplary damages and to pay the costs.

4) In Crim. Case No. 6131 finding the accused Marieto Adora GUILTY beyond reasonable doubt of the crime of RAPE as defined and penalized under Art. 335 RPC and hereby sentences him to suffer the penalty of imprisonment of Reclusion Perpetua, to pay complainant Cecilia Cotorino P50,000.00 as moral damages, P20,000.00 as exemplary damages and to pay the costs.

“The period of time during which the accused had been in detention shall be deducted in full from his sentences.”[7]

Hence, this appeal.

The Facts

Version of the Prosecution

Quoted hereunder are the facts as narrated in the Joint Decision of the trial court:

“The complainant Cecilia Cotorino was born on August 16, 1976 as the youngest among the four children of the spouses Ricardo Cotorino and Fe Echague, the older three others are Cynthia, Ruben and Cherry. The family was modestly living at Bago Bantay, Quezon City where the breadwinner, Ricardo was working. x x x Fe, the mother died untimely sometime in 1979, leaving Ricardo alone to take care of the children. At that time, x x x both Cherry and Cecilia were not yet of school age. The death of the children’s mother greatly affected and prejudiced Ricardo’s working schedule and efficiency. He could not work everyday because the

two young daughters (Cherry and Cecilia) had to be attended to such that sometimes he could work, sometimes he could not.

“The accused Marieto Adora is a brother-in-law of Ricardo Cotorno (Complainant Cecilia’s father) because accused Marieto Adora is married to Ricardo Cotorno’s sister, Apolonia.

“That year after the death of Ricardo’s wife, x x x accused offered to take Cecilia with him to Rapu-Rapu and care for her, for after all, accused and his wife were alone in their house, their only child, having resided already in Iloilo where the latter works. x x x Considering his predicament and because it would be to his sister Apolonia and the accused Adora to whom he would be entrusting the children, Ricardo agreed that his two youngest daughters Cherry and Cecilia stay with the spouses accused Marieto Adora and Apolonia at Rapu-Rapu, Albay.

“Much later, Ricardo Cotorno re-married, this time to a certain Ester Cesar. He has seen Cecilia twice in Rapu-Rapu. This was before the incident herein complained of.

“The sisters Cherry and Cecilia then grew up in the custody and care of accused Adora and his wife. Sometime in 1992, accused Adora was able to find work for Cherry at the Munoz Market at Quezon City. Cecilia was then left alone in the care of accused and his wife.

“Cecilia finished grade 6 in the elementary only. She was no longer sent to high school by accused and his wife. Cecilia grew up to be a small and frail girl barely five feet tall. She grew up believing all the while that accused Marieto Adora was her real father and that the wife Apolonia was her real mother. Cecilia calls the accused Papa and his wife Apolonia as Mama. Having grown up with the accused since Cecilia was about three years old, accused became a real father to her, loving him, respecting him and giving him what is due from a daughter, although when Cecilia was in grade 6, she was already informed about her status, that her father was Ricardo Cotorno and not the accused and that Apolonia was not her mother. This did not change her love and respect to them.

“ XXX At the tender and innocent age of sixteen years, Cecilia underwent a painful x x x experience x x x. She was raped not once but four times, by the very man she grew up with and whom [s]he had revered as a father. All the rapes were committed in the very home where she grew up with the accused at [Big-a], Rapu-Rapu, Albay. On all the four occasions, she had no choice but yield her body and honor because the accused had threatened to behead her and her aunt, Apolonia, wife of the accused. It was only after she was noticed to be pregnant that she revealed the bestial deeds of accused. How all the rapes were committed shall be narrated below.

“On June 25, 1992, only the accused and Cecilia were left at home in (Big-a), Rapu-Rapu, Albay. Her aunt Apolonia, the wife of the accused had gone to Poblacion, Rapu-Rapu for a seminar. Her sister Cherry had long gone to work at Munoz market, Quezon City. At about 8:00 o’clock in the evening of that June 25, 1992, while Cecilia was asleep in her room, the accused sneaked into her room with a bolo locally known as (‘)loknit(‘)[8] in his hand. Once inside the room, accused covered the mouth of Cecilia, undressed her and raped her. Her resistance was of no use as her strength was no match to the weight and persistence of the accused. While she was being raped, accused warned her of telling anyone about what accused was doing to her otherwise accused will behead her and so with her aunt Apolonia. After the accused has satisfied his lust, he went out of the room. Cecilia sat in a corner of the room crying, feeling betrayed and forsaken, repeatedly asking herself why she was raped by the very person she looked upon as her father.

“In the morning of June 26, 1992, when her aunt Apolonia came home from the seminar, she kept silent on the matter afraid that the accused might carry on the threat of beheading her and her aunt Apolonia.

“At about 1:00 o’clock in the afternoon of June 27, 1992, Cecilia was asleep in her room. Her aunt Apolonia was in a gambling session at the house of a certain Merle, 200 meters away from her house. Emboldened by

the silence of Cecilia on the rape he committed on June 25, 1992, accused again sneaked into Cecilia's room armed with the same bolo (')Loknit(') and once inside the room raped Cecilia the second time, under the same threats.

"When Cecilia's aunt Apolonia came home from the gambling session at about 5:00 o'clock that afternoon she did not tell her that she was raped because of the threat of accused.

"At about 2:00 o'clock in the afternoon of August 1, 1992, while Cecilia was asleep in the same room of their house, accused sneaked into the room and for the third time raped her, under the same threats and bringing along with him the same bolo. When her aunt Apolonia came home that afternoon at about 6:00 o'clock she did not tell her about the rape committed upon her person because of the threat.

"On September 24, 1992, her aunt Apolonia was at the Poblacion of Rapu-Rapu, Albay for a seminar. Cecilia was left alone with accused. At about 11:00 o'clock that evening of September 24, 1992, accused carrying the same bolo sneaked into the room where Cecilia was sleeping and once inside raped Cecilia for the fourth time. Again, when her aunt Apolonia came home the following morning, she did not tell her about the rape committed upon her person by the accused for fear of the threat. But that day of September 25, 1992, Cecilia was brought to Legazpi (sic) by the accused to find work for her. That night of September 25, 1992, they slept at Charing's house at Victory Village. She slept with Charing although accused asked her to sleep beside him because she was afraid the accused might rape her again. The following morning, September 26, 1992, she was brought to Nene's Kitchenette at Lapu-Lapu St., where she was hired to work as a dishwasher thereat by the owner Rosario Relucio, also nicknamed Charing, for a salary of P200.00 a month.

"At Nene's Kitchenette, she was visited once by the accused when the latter got P200.00 from her salary.

"Although far from the accused, she told no one of her being raped by the accused, not even her employer Rosario Relucio for fear of the threat made by the accused upon her and to her aunt Apolonia.

"As a result of the first two rapes committed upon the person of Cecilia on June 25 and 27, 1992, she got pregnant. All the while, Cecilia had been silent on the rapes committed upon her person but in December 1992, her enlarging abdomen was noticed by her employer Rosario Relucio and asked about the man responsible for her pregnancy, she felt pressed to the wall and found no excuses. She then broke her silence and told her employer that it was her father (accused) the very same person who brought her to Nene's Kitchenette to work, as the one who impregnated her. Apprehensive of getting involved in Cecilia's situation, Rosario Relucio entrusted Cecilia to a latter's cousin. Subsequently, Cecilia was brought to the National Bureau of Investigation (NBI) Legaspi Office, and after an investigation, she was brought to the DSWD Regional Office, Region 5, Legaspi City for custody and the DSWD brought her to the Albay Provincial Hospital for medical examination where she was found to be pregnant. (Exh. "A", Rollo, p. 57). Then a complaint for the rapes committed was filed against the accused Marieto Adora. (Exh "B", rollo, p. 58)."[9]

### Version of the Defense

The defense relied on the sole testimony of Appellant Marieto Adora. The following may be gleaned from his testimony. He stated that he took the victim in his custody when she was between two and six years old. She was not yet walking then. He raised her as his own daughter, fed her and sent her to school on his income as a fisherman.

He denied raping the victim on June 25, 1992, claiming that he was then in Binosawan, Rapu-Rapu, Albay with his wife attending a fiesta. They left Biga-a in the afternoon of June 23, 1992 and returned only on June 26, 1992. As his wife was against bringing Cecilia with them, they told her to sleep with her uncle, Cristino Cotorino, whose house was only about seven meters from theirs.[10]

On June 27, 1992 he went fishing. He left their house at three in the morning and did not return until four in the

afternoon of the same day.[11]

On August 1, 1992 he was also out fishing, as their town fiesta was approaching (August 13). He went out alone using a sibid-sibid (a small boat or banca).[12]

On September 24, 1992 he and the victim went to Legaspi City. He got the victim employed as a dishwasher at Nene's Kitchenette where she worked for four months.[13] Thereafter, he got an unsigned letter from the victim, dated January 10, 1993, telling him that she could no longer endure working in the eatery and requesting him to fetch her. Although the letter was unsigned, he knew that it was from the victim because he recognized her handwriting.[14]

He also admitted that he had no misunderstanding with Cristino Cotorino, the victim's father, nor did he have any dealing with her other relatives in Albay.[15]

Issues

Appellant interposes the following as errors of the trial court:

## I

"xxx (I)n allying itself with the prosecution and depriving accused of a fair trial.

## II

"xxx (I)n not doubting the testimony of complainant."[16]

On a similar note, he further argues that:

"The complainant blatantly lied on material points which renders her testimony of doubtful veracity.

(I) Contrary to complainant's testimony that accused fathered her child, the medical evidence on record is indubitable that complainant was already pregnant long before she was allegedly abused by accused.

"Complainant's unexpected silence for a period of six months after she was allegedly abused renders her testimony of doubtful veracity.

"Complainant's behavior after the alleged incident is inconsistent with the prosecution's theory and the findings of the trial court."[17]

Appellant seeks his acquittal based on the fact that the medical evidence showed that she was already pregnant prior to the alleged first rape; that on the dates of the alleged rapes, he was not even at home; that the complainant's letter to him proved that she still relied on him for love and support-- inconsistent with the usual behavior of a rape victim towards her aggressor; and that the complaint was filed upon the proddings of the complainant's relatives.

The Court's Ruling

The appeal is not meritorious.

First Issue: The Trial Court's Alleged Bias

Appellant claims that the interventions of the trial court showed that the judge had sided with the prosecution; thus, he was denied his constitutional right to a fair trial.

As first salvo, the defense quotes this excerpt from the stenographic notes to show that the trial judge directed the

prosecutor as to who should be called in as witnesses, thus:

**“COURT:**

Fiscal, you will present that Tiya Charing?

Alright, when do you want this case reset?

Choose your next available dates.”[18]

The reason for said question, as can easily be gleaned from its context, was not to suggest to the prosecutor who the next witness should be, but to confirm the resetting of the hearing. This Court cannot read any bias, much less prejudgment, from this simple and very common question.

Second, appellant also ascribes bias to the trial judge because he disallowed as misleading a question propounded by the defense counsel, without waiting for an objection from the prosecution.[19] Thus:

Q You also claimed that you did not shout to ask for assistance?

COURT:

Misleading. She could not shout because Adora covered her mouth, not that she did not shout. Misleading.”

On the other hand, the judge also made this remark in favor of the defense, viz.:

“(Asst. Prov’l Pros. De Mesa)

Q Mr. Witness, I would like to remind you that on August 1, 1992 you were at sea at 2:00 o’clock because you were about to celebrate the fiesta now you are saying that you were at sea before dawn. Which is correct? (sic) now?

COURT:

He did not say 2:00 o’clock he only said I was at sea because I was x x x.”[20]

These examples clearly signify the trial court’s zealous regard for the propriety of questions propounded to witnesses during trial. These instances cannot be equated with bias for the prosecution or, for that matter, even for the defense.

Finally, appellant claims that the following statement made by the presiding judge shows his partiality towards the prosecution, thus:

Q Now, since you treated them as your own parents, how did you feel after this Marieto Adora, for several times, raped you?”[21]

Then the trial judge asked the victim-witness several questions in this wise:

COURT: (Propounding questions)

Q Alright, questions from the Court. Do you know your height?

A No, your Honor.

Q Do you know your weight?

A I do not know, your Honor.

Q When were you born?

A I was born on August 16, 1976.

COURT:

At any rate, make it of record that the witness, complainant Cecilia Cotorino appears to be with frail body and relatively a small girl.”[22]

Afterwards in its decision, the trial court concluded:

“The accused is Cecilia’s uncle but who was a father to her because she lived with him, she was under his custody since she was three years old and she grew up with him until age sixteen when she was raped. Because of this situation, no doubt the accused had exercised strong moral and physical influence and control over her. Naturally, Cecilia’s regard for the accused as her father intervened in those moments she was raped. The court therefore, views this outrage upon Cecilia by the accused as rapes committed by a father upon his own daughter, such that, with or without force or intimidation, any sexual intercourse with Cecilia by accused by reason of her age would be like a rape committed by a father to her daughter, because if there is no force or intimidation applied, the father’s moral ascendancy and influence over her daughter substitute for violence or intimidation. (People vs. Erardo, 127 SCRA 250)”[23]

Appellant argues that these questions ceased to be clarificatory in nature and became direct examination instead.

Again, we are not persuaded. Trial judges must be accorded a reasonable leeway in directing questions to witnesses as may be essential to elicit relevant facts and to make the record speak the truth. In such an effort, a judge may examine or cross-examine a witness.[24] He may seek to draw out relevant and material testimony though that testimony may tend to support or rebut the position taken by one or the other party.[25] This is not only the right but also the duty of a trial judge. Under our system of legal procedure where he is judge of both the law and the facts, it is often expedient or even necessary in the due and faithful administration of justice for the presiding judge, in the exercise of sound discretion, to question a witness in order that his judgment may rest upon a full and clear understanding of the facts.[26]

In this case, we do not believe that the trial judge transgressed the permissible limits of what questions he could propound to a witness. In the above instances, the trial judge sought to elicit information on whether appellant used sufficient “intimidation” on the victim. For the record, he wanted only to elucidate how the witness appeared to the court as she was testifying on the stand. That the answers of the witness formed part of the decision is not a proof of prejudgment or bias towards the prosecution.

The accused’s reliance on the ruling in *People vs. Opida*[27] is misplaced. What was objectionable therein was the trial judge’s tenor in questioning some defense witnesses. In the said case, the trial court was adversarial, cruel and/or irrelevant. The trial judge there accorded hostile and even sadistic treatment to said witnesses. Further, he went to the extent of saying, “You want me to dictate the decision now?” This is not so in this case where the trial magistrate was not proven to have similarly prejudged appellant. We believe he merely performed his function to ferret out the truth so his decision would be cogent and based on facts. Thus, we hold that the scales of justice had remained equal throughout the trial and appellant had been given a fair hearing characterized by the cold neutrality of an impartial judge.

**Inexactitude in the Date of Fertilization**

Appellant also anchors his defense on the medical evidence on record allegedly proving that he did not father the complainant’s child.

We disagree. First, relying on the testimony of the prosecution expert witness, Dr. Evelyn L. Cua, appellant argues that the victim became pregnant even before the supposed first rape. Appellant clearly takes the doctor’s testimony out of context. What the doctor testified to was that she advised the victim to take an ultrasound reading

because the fetus appeared to be too small to be eight months old. Said the doctor:

“A I saw the patient last January 4, that was the initial time I saw the patient. She told me that her last menstruation was April 23, and counting the date from April 24, she would be around eight months pregnant. When I examined her, the baby or fetus was very small for that stage that is why I requested for ultra sound reading to (determine) or guide my supposition that the baby was small, very small or that there was an error in the age or term of the pregnancy. Two days later, when the ultrasound reading was done, this is the official reading: (‘)PU which means pregnancy uterine, 29 - 30 weeks, AOG, which is supposed to read (‘)AOP(‘), meaning age of pregnancy, Cephalic, Not in labor.(‘)” [28]

Second, authorities in forensic medicine agree that the determination of the exact date of fertilization is problematic. The exact date thereof is unknown; thus, the difficulty in determining the actual normal duration of pregnancy. [29] A Filipino authority writes:

“The average duration of pregnancy is 270 to 280 days from the onset of the last menstruation. There is however no means of determining it with certainty. Evidence derived from pregnancy following a single coitus is trustworthy, but inasmuch as some authorities consider more than two weeks as the life span of the spermatozoa in the vaginal canal, it is hard to ascertain the exact date of fertilization. There is no synchrony between coitus and fertilization.”[30]

Computation of the whole period of gestation, thus, becomes a purely academic endeavor. In this light, while most authorities would agree on an average duration, there are still cases of long and short gestations.

“Thus, the stage of development of the fetus cannot be determined with any exactitude, and an error of at least two weeks, if not more, should be allowed for. This, together with the recognized variation in the duration of normal pregnancies, makes it very unsafe to dogmatise in a medico-legal case xxx.”[31]

More importantly, it should be pointed out that these consolidated cases are criminal cases for rape, not civil actions for paternity or filiation. The identity of the father of the victim’s child is a non-issue. Even her pregnancy is beside the point.[32] What matters is the occurrence of the sexual assault committed by appellant on the person of the victim on four separate occasions. At any rate, that the victim was already pregnant before the first rape does not disprove her testimony that appellant raped her.

#### Second Issue: Testimony and Conduct of Complainant

Well-settled is the rule that delay in the reporting of rape is not an indicium of fabrication. Neither does the victim’s failure to cry out for help or to immediately denounce appellant’s acts mean consent thereto. That the victim did not make known the four instances of rape committed against her until they could no longer be concealed does not diminish her credibility as a witness.

The reason was sufficiently explained by the victim. She testified that her uncle threatened to decapitate her and her aunt. Such a threat from her adoptive father was sufficient to instill fear in the frail, sixteen-year-old girl and to keep her from denouncing her aggressor.

A victim’s disclosure that she has been raped must not be taken lightly. It is not uncommon for a young girl to conceal for some time the assault on her virtue because of the rapist’s threats on her life,[33] fear of public humiliation,[34] and/or lack of courage and composure to immediately complain that she has been sexually assaulted.[35]

In the case at bar, the four incidents of rape were all attended by appellant’s threat to behead her and her aunt with a *luknit*. Further, her aggressor was none other than the man she regarded as her father and with whom she lived. Thus, not much explanation is needed to understand the prolonged silence of the victim.

### Evidentiary Weight of Letter

Appellant also contends that the victim's letter asking him to fetch her from her workplace demonstrated conduct inconsistent with that of an abused woman towards her abuser. We cannot sustain this view.

Hardly any probative value can be given to the unsigned letter. It was not shown how appellant recognized the handwriting of the victim. It was not compared with other handwriting samples of the victim. Neither was it demonstrated that she had specimen handwriting which the accused was familiar with.

More telling is the fact that the letter asking appellant to fetch the victim from the kitchenette was dated January 10, 1993, but it has been established that the latter had already been taken into custody by the NBI and DSWD as early as January 1, 1993. The reluctance of the trial court judge to accord evidentiary weight to the letter is thus justified.

### Crime and Punishment

The commission of rape with force and intimidation under Article 335 (par. 2) of the Revised Penal Code is clearly established by the testimony of the victim herself, thus:[36]

“PROS. DE MESA: (On direct examination)

Q Cecilia on June 25, 1992 at about 8:00 in the evening, do you remember where you were?

A Yes, Madam.

Q Can you tell the Court where you were on that date and time?

A I was at our house.

Q Where is that house you are referring to?

A At Biga-a, Rapu-rapu.

Q While thereat on said time and date, do you recall any unusual incident that happened on that date and time?

A Yes, Madam.

Q Will you tell the court what that incident is all about?

A While I was sleeping, my uncle entered my room.

PROS. DE MESA:

May we make it of record your Honor that the witness is crying.

Q What happened after you(r) uncle entered your room?

A When he entered my room he was carrying a (‘)luknit(‘) which is a kind of knife usually used for stripping abaca.

Q What happened next after he entered your room carrying a (‘)luknit(‘)?

A He covered my mouth with his hand and undressed me. I wanted to shout but I could not because my mouth was covered by his hand.

Q After he covered your mouth and undressed you what happened next?

A He placed his (‘)ano(‘) into my (‘)ano(‘).

Q What do you mean by (‘)ano(‘)?

A (The witness is crying) He placed his sex organ inside my vagina.

Q After that what happened next?

A While he continued to rape me, to abuse me, he told me that if will (sic) reveal to anybody what he did to

me, I will be beheaded including my aunt Apolonia (witness is sobbing uncontrollably).

Q After the accused, Marieto Adora, had sexually abused you, what did you do?

A (Witness crying uncontrollably (sic)) After he abused me, I sat in the corner of the room and cried and cried and asked myself why my uncle did it to me considering that I regarded him with respect like my own father.

COURT:

Let us have a recess for 5 minutes

PROS. DE MESA:

May we make it of record your Honor that the witness is gasping for breath and crying uncontrollably, testifying under labor of pain, looking very pale as if she is sick for which reason the Court called for a 5-minute recess.

x x x x x x x x x x

Q What did you do when he was raping you?

A I pushed him away from me and I wanted to shout but he covered my mouth with his hand.

Q Now on that date June 25, 1992 when Marieto Adora raped you, who were with you in the house aside from Marieto?

A I was the only person there because his wife attended a seminar. Only the two of us were left in the house.

x x x x x x x x x x

PROS. DE MESA:

Q Now when did--- ah--- you said (sic) that your auntie was attending a seminar at that time June 25 when you were raped by your uncle Marieto Adora, what time did she return to your house?

A The following morning.

Q In the morning when your auntie returned did you tell her what happened to you?

A No Madam.

Q Why not?

A I was afraid because Marieto Adora told me that my head will be cut off and that of my auntie if ever I will tell her. I was engulfed with fear.

Q Now on June 27, 1992 in the afternoon where were you, if you recall?

A I was in our house.

Q Can you tell us what you were doing about 1:00 on said date? June 27, 1992?

A I was sleeping.

Q Do you recall of any unusual incident again that happened on June 27, 1992 in the afternoon while you were sleeping?

A Yes, Madam[.]

Q Tell the court what was that unusual incident that happened on June 27, 1992 in the afternoon?

A Every time he entered my room, he was carrying a (‘)luknit(‘) which is a kind of bolo with teeth used for stripping abaca.

Q Are you saying that Marieto Adora entered your room again on June 27, 1992 at around 1:00 o’clock in the afternoon?

A Yes, Madam.

Q What did Marieto do in your room?

A He raped me again.

Q Was Marieto again with the --ah---carrying the Luknit that you described?

A Yes, Madam.

Q Can you describe to the Honorable Court how Marieto raped you on that particular date and time?

A Whenever he entered my room because my room has no lock, he was carrying the (‘)luknit(‘). He covered my mouth with his hand so that I could not shout.

Q Did Marieto succeed in raping you again on that date and time?

ATTY. DOTE:

Leading.

COURT:

Already answered. She said she was raped again.

PROS. DE MESA: (CONTINUING)

Q Where was your auntie on June 27, 1992 at 1:00 o’clock in the afternoon when you said you were again raped by the accused?

A My auntie was gambling.

COURT:

Q How far was that gambling place?

A It is far, in the place of Mamay Merle.

PROS. DE MESA:

Q Can you make an estimate of the distance, if you know?

A From my seat to that place (witness indicating a distance which the parties agreed to be about 200 meters).

Q What time did your auntie return to your house?

A About 5:00 in the afternoon.

Q Did you tell her what happened to you on that date, June 27, 1992?

A No, Madam.

Q Why, for what reason?

A No Madam because that Marieto was always standing by the doorway.

Q And what about if Marieto was not standing by the doorway, so what?

A Marieto keeps on warning me not to tell my aunt what happened to me because I will be beheaded if I will reveal the matter to my aunt.

Q On August 1, 1992, can you tell the Court where you were at that time 2:00 o’clock in the afternoon?

A I was in the house.

Q Do you recall of any incident that happened again to you on August 1, 1992 at about 2:00 in the afternoon?

A While I was sleeping Marieto entered my room.

Q What did Marieto Adora do to you?

A He was again carrying a luknit.

Q And after you saw him carrying the luknit when he wnetered (sic) your room, what happened to you?

A He removed my panty and placed himself on top of me.

Q While he was on top of you what was Marieto doing?

A He inserted his penis inside my vagina.

Q Did you not shout?

A No Madam because he was always with that luknit and he covers my mouth with his hand and threatend (sic) me not to tell anybody because he will behead me.

Q What was Marieto telling you while he was raping you?

A While he was raping me he continued to remind me not to reveal what he was doing to me because if ever I tell anybody, I will be beheaded, including my aunt.

Q On August 1, 1992 when according to you you were again raped in your room by your uncle, the accused in this case where was your auntie?

A She was in the gambling session.

Q And did she return that day to your house?

A No Madam. She went home at 6:00 in the evening.

Q When your auntie returned did you tell her what Marieto-- ah--- that the accused raped you?

A No Madam because if I tell my aunt while I am still there I would be killed. I am afraid that I will be beheaded by Marieto.

Q On September 24, 1992 in the evening where were you Cecilia?

A I was at our house. His wife attended again a seminar.

Q Do you remember who was with you in the house?

A That Marieto.

Q Do you recall of a similar incident that happened on that day?

ATTY. DOTE:

Objection, very leading.

PROS. DE MESA: (rephrasing her question)

Q Do you recall of an unusual indicent (sic) that happened to you on Sept. 24, 1992 at about 11:00 in the evening?

A Yes, Madam.

Q Will you tell the court what was that incident that you recall?

A While I was sleeping he entered my room again.

Q And what time--- ah-- what did he do when he entered your room?

A He was again carrying a luknit and then he undressed me and placed himself on top of me, covered my mouth with his hand and then raped me.

Q Did you not shout or resist?

A I could not because he was covering my mouth.

Q Were you able to do anything to get yourself free from the accused?

A I could not free myself from Marieto because he is very heavy and then he was threatening to kill me with the luknit if I shout.

Q Now you tell the court again where your aunt was at the time when Marieto raped you on Sept. 24, 1992 at about 11:00 in the evening?

A My aunt was in Rapu-Rapu attending a seminar.

Q Where in particular in Rapu-rapu?

A In Sta. Florentina.

Q You said that your auntie is attending a seminar. Do you know what is the seminar about?

A She is a catechist.

Q What time did you (sic) aunt return to Bigaa to your house?

A The following morning.

Q When your aunt returned homse (sic) the following morning did you tell her about what happened to you on that evening of September 24, 1992?

A No Madam.

Q Why not?

A I was afraid to tell my aunt because she is also very cruel, unkind and mean (maisog).

Q After September 24, 1992 when according to you you were again raped by the accused, what happened the following morning?

A His wife arrived the following morning and they talked to each other that I should work.

Q After they talked about you getting you to work, what happened next?

Q(sic)Marieto brought me to Legazpi (sic) City.”

Thus, authorship of the crime has been attributed to appellant by no less than the victim herself. The victim's testimony, standing alone, can be made the basis of appellant's prosecution and conviction if such testimony meets the test of credibility.[37] From the nature of the offense, oftentimes the only evidence that can be offered to prove the guilt of the perpetrator is the complainant's testimony. This Court has even gone to the extent of pronouncing that:

“x x x when a woman says that she has been raped, she says in effect all that is necessary to show that the rape has been committed, and that if her testimony meets the test of credibility the accused may be convicted on the basis thereof.”[38]

Courts usually give credence to the testimony of a girl who is a victim of sexual assault because, ordinarily, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice.[39] Even during her cross-examination, no malice, ill motive, or proof of lying has been shown. Her testimony remained positive, categorical and credible. Furthermore, there is no evidence that the filing of the complaint for rape was motivated by a grudge between appellant and the Cotornos. Appellant's admission that they had no misunderstanding and that they had few dealings with each other bolsters this conclusion.

We also agree with the trial court that force and intimidation had been employed by appellant on the victim, thus:[40]

“During all the rapes committed by the accused upon Cecilia, he was always with a bolo and while committing the rape she was being told to keep the matter a secret and to tell no one of what the accused was doing, otherwise, she will be beheaded and so with her aunt Apolonia. This threat was more than sufficient to break Cecilia's resistance considering their relationship. x x x The test of sufficiency of force or intimidation in the crime of rape under Art. 335 of the Revised Penal Code, is whether it produces a reasonable fear in the victim

that if she resists or does not yield to the bestial demands of the accused, that which the latter threatened to do would happen to her or to those dear to her. Where such degree of intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable to expect the victim to resist with all her might and strength. And even if some degree of resistance would nevertheless be futile, offering none at all cannot amount to consent to the sexual assault. For rape to exist, it is not necessary that the force or intimidation employed in accomplishing it be so great or of such character as could not be resisted, it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. (People vs. Savellano, 57 SCRA 320) This is especially true in the case of a young, innocent, immature girl like Cecilia, who could not be expected to act with equanimity of disposition and with nerves of steel. (People vs. Viray, 164 SCRA 135) or to act like an adult or mature and experienced woman who would know what to do under the circumstances or to have the courage and intelligence to disregard the threat. (People vs. Jimenez, 200 SCRA 539)

The accused is Cecilia's uncle but who was a father to her because she lived with him, she was under his custody since she was three years old and she grew up with him until age sixteen when she was raped. Because of this situation, no doubt the accused had exercised strong moral and physical influence and control over her. Naturally, Cecilia's regard for the accused as her father intervened in those moments she was raped. The court therefore, views this outrage upon Cecilia by the accused as rapes committed by a father upon his own daughter, intercourse with Cecilia by accused by reason of her age would be like a rape committed by a father to her daughter, because if there is no force or intimidation applied, the father's moral ascendancy and influence over her daughter substitute for violence or intimidation. (People vs. Erardo, 127 SCRA 250) That ascendancy or influence necessarily flows from the father's parental authority xxx as well as from the children's duty to obey and observe reverence and respect towards their parents. Such reverence and respect are deeply ingrained in the minds of Filipino children xxx. Abuse by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants."

Appellant's defense of alibi is fundamentally and inherently a weak defense, much more so when uncorroborated by other witnesses. Appellant failed to prove that he was not present at the scene of the crime at the time of its commission. Juxtaposed against the clear, straightforward, positive and credible testimony of the victim, his alibi cannot stand.[41]

The well-settled rule is that appellate courts will generally not disturb the findings of the trial court on the credibility of witnesses.[42] Such findings are conclusive upon the Supreme Court in the absence of any showing that the trial court has overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case.[43]

#### Damages

The Court reiterates the rule that a claim for damages must be supported by proof.[44] During the trial, the claimant must satisfactorily prove the existence of the factual basis of the damages and its causal connection to defendant's acts. In particular, although proof of pecuniary loss is not required, moral damages must be anchored on a showing that the claimant experienced physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation or similar injury. Regrettably, we find no basis for its award in this case, as the complainant herself did not ask for it or present evidence that she experienced moral suffering. Thus, the order of the court a quo granting moral damages of fifty thousand pesos (P50,000.00) and exemplary damages in the amount of twenty thousand pesos (P20,000.00) for each count of rape must be deleted.[45]

Acknowledgement and support of the victim's offspring may form part of the civil liability of persons guilty of crimes against chastity.[46] The trial court, however, did not order the accused to acknowledge or support

complainant's child. We support the trial court, for the issue of the paternity of the complainant's child remains unresolved. We refrain, therefore, from proceeding further on this matter.

Instead, in line with current jurisprudence, the Court awards to the complainant civil indemnity of fifty thousand pesos (P50,000.00) for each count of rape. Civil indemnity is automatically granted to the offended party without need of further evidence other than the fact of the commission of the crime and the accused's responsibility therefor.[47]

WHEREFORE, the assailed Joint Decision of the trial court is hereby AFFIRMED with the following MODIFICATIONS:

1. The award of moral and exemplary damages is hereby DELETED;
  2. Appellant is ordered to pay civil indemnity to Cecilia Cotorino in the amount of fifty thousand pesos (P50,000.00) for each count of rape, or a total of two hundred thousand pesos (P200,000.00).
- SO ORDERED.

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

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[1] Penned by Judge Vladimir B. Brusola.

[2] Rollo, pp.13-14.

[3] Ibid., pp. 15-16.

[4] Id., pp. 17-18.

[5] Id., pp. 19-20.

[6] Id., p. 21.

[7] Assailed Decision, pp. 8-9; Rollo, pp. 43-44.

[8] Also referred to as luknit.

[9] Assailed Decision, pp. 2-5; rollo, pp. 37-40.

[10] TSN, May 23, 1994, pp. 6-8.

[11] Id., pp. 9-10.

[12] Id., p. 10.

[13] Id., pp. 10-11.

[14] Id., pp. 11-12.

[15] Ibid., pp. 37-38.

[16] Appellant's Brief, p. 4; rollo, p. 80

[17] Ibid., pp. 4-5; rollo, pp. 80-81.

[18] TSN, October 22, 1993-P.M., p. 14.

[19] TSN, October 22, 1993, p. 18.

- [20] TSN, May 23, 1994, pp. 23-24.
- [21] TSN, October 22, 1993, p. 29.
- [22] TSN, October 22, 1993, pp. 24-25.
- [23] RTC Decision, p. 6; rollo, p. 41.
- [24] *People vs. Manalo*, 148 SCRA 98, 105, February 27, 1987.
- [25] *Ibid.*
- [26] *US v.s. Lim Tiu*, 31 Phil 504, 506 (1915); and *People vs. Moreno*, 83 Phil 286, 294 (1949).
- [27] 142 SCRA 295, June 13, 1986.
- [28] TSN, October 24, 1993, p. 7.
- [29] Douglar Kerr, *Forensic Medicine*, fifth edition, p. 173.
- [30] Pedro Solis, *Legal Medicine*, p. 548.
- [31] Kerr, *op. cit.*, pp. 173-174.
- [32] *People vs. Alib*, 222 SCRA 517, 525, May 24, 1993.
- [33] *People vs. Malunes*, 247 SCRA 317, 324, August 14, 1995; *People vs. Alib*, *ibid.*, pp. 529-530; and *People vs. Abordo*, 224 SCRA 725; 733, July 23, 1993.
- [34] *People vs. Malunes*, *ibid.*, p. 325 and *People vs. Grefiel*, 215 SCRA 596, 609, November 13, 1992.
- [35] *People vs. Malunes*, *ibid.*, p. 326; *People vs. Olivar*, 215 SCRA 759, 765, November 13, 1992; and *People vs. Lim*, 206 SCRA 176, 183, February 13, 1992.
- [36] TSN, October 22, 1993, pp.4-13.
- [37] *People vs. Gapasan*, 243 SCRA 53, 57, March 29, 1995; and *People vs. Abo*, 230 SCRA 612, 619, March 2, 1994.
- [38] *People vs. Segundo*, 228 SCRA 691,697, December 27, 1993.
- [39] *People vs. Abendano*, 242 SCRA 531, 538, March 21, 1995; *People vs. Junio*, 237 SCRA 826, 831, October 28, 1994; *People vs. Grefiel*, *supra.*, p. 609; and *People vs. Villaflores*, 174 SCRA 70, 79-80, June 8, 1989.
- [40] RTC Decision, pp. 113-115.
- [41] *People vs. Abordo*, *supra.*, p. 732; and *People vs. Lim*, *supra.*, p. 182.
- [42] *People vs. Estrellanes, Jr.*, 239 SCRA 235, 247, December 15, 1994; *People vs. Jacalan*, 230 SCRA 1, 8, February 10, 1994; and *People vs. Albarico*, 238 SCRA 203, 212, November 17, 1994.
- [43] *People vs. Santos*, 238 SCRA 503, 510, December 1, 1994; *People vs. Pablo*, 239 SCRA 500, 504, December 28, 1994; and *People vs. Dismuke*, 234 SCRA 51, 58, July 11, 1994.
- [44] *Kierulf vs. Court of Appeals*, G.R. No. 99343, March 13, 1997, p. 23; and *People vs. Corea*, G.R. No. 114383, March 3, 1997, p.23.
- [45] Article 2234 of the Civil Code provides that while the amount of the exemplary damages need not be proved,

the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether exemplary damages should be awarded.

[46] Article 345, Revised Penal Code.

[47] People vs. Eduardo Caballes, G.R. No. 102723-24, June 19, 1997.

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