

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CIRILO BALMORIA, ACCUSED-APPELLANT.

G.R. Nos. 120620-21. March 20, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Rape may be proven by the credible and unbiased testimony of the offended party. In this case, such testimony is confirmed by the sister of the appellant and corroborated by medico-legal findings. Hence, the conscience of the Court rests easy in affirming the conviction of the appellant for the rape of his two young daughters.

[The Case]

This is an appeal from the Decision^[1] dated December 15, 1994 of the Regional Trial Court of San Juan, Southern Leyte, Branch 26, in Criminal Case Nos. 1089 and 1090, convicting Cirilo Balmoria of two counts of rape inflicted on his two daughters, Marissa and Lorena.

Two Informations,^[2] both dated September 2, 1993, were filed by Provincial Prosecutor II Andres G. Yu, Jr. against appellant. In Criminal Case No. 1089, the Information reads:

“That on or about the 28th day of January, 1991 at around 7:30 o’clock in the evening, more or less, in Barangay Sug-angon, St. Bernard, Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lustful intent and lewd design, by means of deceit, force and intimidation and taking advantage of the confidence afforded by the offended party, Marissa G. Balmoria, to him as a father, did then and there willfully, unlawfully and feloniously made her lay down on the copra drier house locally known as “tapahan,” and had sexual intercourse with her against her will, thereby resulting to the loss of her virginity, to the damage and prejudice of the said victim and her family.

CONTRARY TO LAW.”

The Information in Criminal Case No. 1090, on the other hand, states:

“That on or about the 29th day of January, 1991 at around 12:00 o’clock noon, more or less, in Barangay Sug-angon, St. Bernard, Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lustful intent and lewd design, by means of deceit, force and intimidation and taking advantage of the confidence afforded by the offended party, Lorena G. Balmoria, to him as a father, did then and there willfully, unlawfully and feloniously made her lay down on the floor, and had sexual intercourse with her against her will, thereby resulting to the loss of her virginity, to the damage and prejudice of the said victim and her family.

CONTRARY TO LAW”

Upon arraignment, appellant pleaded not guilty to both charges. The two cases were tried jointly and, on December 15, 1994, the trial court promulgated the assailed Decision, the dispositive portion of which reads:

“WHEREFORE, the foregoing premises considered, the court hereby finds the accused guilty beyond all

reasonable doubt of the crime of RAPE in Criminal Case No. 1089 and hereby sentences him to suffer the penalty of RECLUSION PERPETUA and to indemnify the victim Marissa G. Balmoria the sum of P50,000.00.

In Criminal Case No. 1090, the court also finds the accused guilty beyond all reasonable doubt of the crime of RAPE and hereby sentences him to suffer the penalty of RECLUSION PERPETUA and to indemnify the victim Lorena G. Balmoria the sum of P50,000.00.

The court in imposing the maximum penalty for the crime charged has taken into consideration the aggravating circumstance of relationship.

Considering the seriousness of the penalty herein meted out, the Officer in-Charge of the Sub-Provincial Jail, San Juan, Southern Leyte, is hereby ordered to immediately transport the accused to Abuyog Penitentiary, Abuyog, Leyte, as precautionary measure against breaking jail. Costs against the accused.

SO ORDERED.” [3]

Hence, this appeal.[4]

[The Facts Version of the Prosecution]

The prosecution’s version of the facts is narrated by the trial court as follows:[5]

“Lorena G. Balmoria testified that she [was] no longer going to school[,] and at the time of the assault upon her honor by the accused, she was only 8 years old. At the time of the trial, she was already 11 years old. The incident happened on January 29, 1991, at around 12:00 o’clock noon. Lorena testified that at that particular time in their small house at BRGY. Sug-angon, St. Bernard, Southern Leyte, while her elder sister, Marissa[,] and brother were sent by her father and herein accused to grind palay, she was raped by her father, Cirilo Balmoria, the accused herein. She alleged that at the time of her rape, her mother was already out of their house to seek employment in Manila. She was alone with the accused. Lorena further testified that the accused made her lie down. Their house is just a one-room affair [sic] structure. Then she was told to remove her panty. When she refused to obey the order, the accused forcibly removed her panty. Then the accused who also removed his pants, mounted on her. Then he inserted his male organ into her vagina. Because she felt terrible pain, she cried and the accused slapped her face and told her to shut up. Lorena further alleged that her father-accused made push and pull movement with his organ and shortly thereafter, she noticed blood and some whitish substance coming out of her vagina. Her father told her not to reveal what he did to her or else, he will kill her and her sister, brother and mother with the use of a small bolo used in stripping abaca locally known as “tuksi.” The accused according to Lorena is usually drunk and whenever he is drunk, he would abuse her. Lorena testified that she was raped twice. She further testified that she saw her father also raping her elder sister, Marissa, in their house. Their house has no partition and all of them are sleeping in the same room, also used as living and dining room.

Lorena further testified that sometime in May 1993, when her father went to Bukidnon and she and Marissa and her brother stayed with her auntie, Ana Gallamos, she revealed to her aunt the horrible experience she had in the hands of her father who repeatedly raped her and Marissa.

Testifying also for the prosecution, Marissa G. Balmoria alleged that she is the private offended party in Criminal Case No. 1089, for Rape, which she filed against her own father. She testified that she was 13 years old at the time of the trial and was 10 years old at the time the rape first took place on January 28, 1991, at about 7:30 o’clock in the evening. Marissa testified that on January 28, 1991, at about 7:30 o’clock in the evening, while she was inside their house, her father, accused Cirilo Balmoria, who was in their yard, called her and asked her to accompany him towards the copra drier as he was going to defecate. When they reached the copra drier, “tapahan” in local dialect, she was made to lie down. Marissa further alleged that when she was already lying down on top of the drier, she was ordered by her father to remove her panty. When she

refused to do so, he himself removed it and he then removed also his short pants and got on top of her. Then her father inserted his male organ inside her vagina and she felt terrible pain. She shouted and cried but her father slapped her face and told her to shut up. After he had made his push and pull movements, Marissa alleged that she saw blood and some whitish substance come out from her vagina. He further told her not to tell anyone about this incident otherwise, he will kill her and her family with a very sharp bolo used to strip abaca locally known as “Tuksi.” Marissa knows her father always to be drunk and violent, so, for fear of her life and that of her family, she kept silent about what had been done to her by her father. Marissa further testified that she had been ravished by her father for at least six (6) times more, until sometime in May 1993. Marissa also alleged that she also witnessed her father raping her younger sister, Lorena.

The prosecution presented another witness, Ana Gallamos. Gallamos testified that she is the younger sister of the accused, Cirilo Balmoria, and they are immediate neighbors in Brgy. Sug-angon, St. Bernard, Southern Leyte. Sometime in the month of May, 1993, sometime in the morning while she was fixing her fence, she heard Marissa, her niece shouting and crying, saying ‘Kill me, father, if you want, because I can no longer hold on’ (‘Tay, patya na lang ko, dili na ko maka-antos’). When she heard this, she repaired to the house of her brother, Cirilo Balmoria and she saw that only the accused and Marissa were there inside and she saw the accused zippering up his pants and Marissa very pale and crying. Gallamos did not dare confront the accused as she knows that he is always drunk and violent. She was afraid of him. Gallamos further alleged that after that incident, the accused would not give her a chance to be with his children. But when the house of the accused was burned and he left for Bukidnon, she took the children to her house and she inquired from Marissa why she was shouting and crying and asking her father to just kill her as she could not hold on anymore, Marissa revealed that she was raped by her father and had been repeatedly raped since January 28, 1991. Lorena also revealed to Gallamos her ordeal of being sexually abused by her father since January 29, 1991. Both Marissa and Lorena confided to Gallamos that they were sometimes raped by their father one after the other inside their house. Upon hearing this information, she brought the victims to Anahawan District Hospital, Anahawan, Southern Leyte, for medical examination. They were examined by Dr. Gil Nanquil, Medical Officer III of the said hospital.

Testifying for the prosecution, Dr. Gil Nanquil, Medical Officer III of the Anahawan District Hospital, Anahawan, Southern Leyte, alleged that on June 9, 1993, he performed pelvic examination on Marissa G. Balmoria and Lorena G. Balmoria, whose aunt requested that they be examined for they are rape victims.

For Marissa G. Balmoria, he found ‘positive healed laceration at 11 o’clock.’ For Lorena G. Balmoria, he found ‘positive healed laceration at 4 o’clock and 8 o’clock.’ Dr. Nanquil alleged that he had conducted several medico-legal cases already in the past and as such, he is qualified as expert witness. The accused did not object to his qualifications as expert witness to testify on his findings on the victims.”[6]

[Version of the Defense]

Claiming denial and alibi, appellant views the facts as follows:

“Cirilo Balmoria testified that on January 28, 1991 he worked in the abaca farm of his father and finished working at about 4:00 o’clock in the afternoon after which he dropped by at his house and changed his wet clothes. At that time his two daughters, Lorena and Marissa [,] did not yet arrive. After changing his clothes, he proceeded to the house of his father and delivered abaca and there at [sic] bought some drinks. They engaged in drinking spree together with Enroy Eduarte and Gerardo Carasona until 7:00 o’clock in the evening. Thereafter, Gerardo Carasona invited him to catch frogs at the stream in the irrigation canal. They were able to catch frogs and shrimps about one half net bag until 9:00 o’clock in the evening. They went directly to the house of Gerardo Carasona where they skinned and cooked the frogs. He went home past 10:00 o’clock in the evening.

On January 29, 1991, he likewise worked in the abaca farm of his father together with the latter, Enroy Eduarte and Gerardo Carasona. They started cleaning the farm after breakfast and finished cleaning at about 4:00

o'clock in the afternoon. From 7:00 o'clock in the morning up to 4:00 o'clock in the afternoon he was in the farm of his father. He took his lunch there. He declared that his daughter Lorena and Marissa were attending classes at Tambis Elementary School, a few kilometers away from their residence. His daughters took their lunch in school.

He further declared that he could not rape his own children because they are his own blood and the rape charges against him are all lies and fabrication as his children could be mad at him because he usually punish [sic] them for failure to attend classes and instead they go to the stream to take a bath.”[7]

[The Issues]

Appellant submits the following assignment of errors:[8]

“I

The trial court gravely erred in giving full weight and credence to the inconsistent and improbable testimonies of the private complainants Marissa Balmoria and Lorena Balmoria.

II

The trial court gravely erred in considering extraneous statements/matters not testified to by the prosecution witnesses during the trial.

III

The trial court gravely erred in finding accused-appellant Cirilo Balmoria guilty of two counts of rape despite the insufficiency of the evidence for the prosecution that would warrant a conviction beyond reasonable doubt.”

Simply put, appellant questions the sufficiency of the prosecution’s evidence to prove his guilt beyond reasonable doubt.

[This Court’s Ruling]

The appeal is completely bereft of merit.

[Sufficiency of Prosecution’s Evidence Credibility of Witnesses]

In reviewing rape cases, this Court has always been guided by the following principles: (a) an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime which usually involves only two persons, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits; it cannot be allowed to draw strength from the weakness of the evidence for the defense.[9] Thus, courts scrupulously examine the testimony of the complainant, bearing in mind that the conviction of the accused depends heavily on the credibility of the offended woman.[10]

As a rule, appellate courts will not disturb the findings of the trial court on the credibility of witnesses, for the trial court is in a better position to decide the question.[11] However, this doctrine will not apply in this instance, because the judge who penned the assailed Decision, Jose H. Mijares, did not personally hear the evidence for the prosecution and the defense.[12] It was Judge Leonardo T. Loyao who heard the testimony of the witnesses in this case. Accordingly, this Court waded through the entire records of the case and stringently examined the testimonies of the witnesses.

After a thorough review of the said records, we find no reason to disturb the findings of the trial court that the two victims, Marissa and Lorena, “candidly, positively and categorically testified as to their harrowing experience and their testimonies deserve utmost weight and credit.”[13] Not only did they testify convincingly that they -- before reaching the age of twelve -- had been sexually assaulted by their father against their will; they also emphatically stated that each of them witnessed the rape perpetrated against the other. The salient portion of Lorena’s testimony is reproduced below:

“Q Why is your father in court now?

A He raped.

Q Who was raped by your father?

A I, sir, and my elder sister.

Q You were raped by your father, where?

A In our house.

Q In Sug-angon, St. Bernard, Southern Leyte?

A Yes, sir.

Q What time did the rape occur?

A That was noon time, sir.

Q Where did this rape occur?

A In our house.

Q In the bedroom?

A Inside the room, sir.

PROSECUTOR YU:

Q How did your father rape you?

A I was made by him to lie down.

Q And then what did your father do to you?

A He raped me, sir.

Q What did he tell you when he was trying to rape you?

A He told me not to tell it to somebody. If I would do it, he would kill me.

Q Were you wearing panty at that time?

ATTY. AVILA:

Leading, Your Honor.

COURT:

Witness may answer.

A Yes, sir.

PROSECUTOR YU:

Q Who removed your panty?

A My father.

Q When he removed your panty, what did you do?

A I was afraid.

Q After he removed your panty, what did your father do to you?

A He laid on top of me.

Q What was your father wearing at that time? His trousers?

A He was wearing long pants.

PROSECUTOR YU:

Q When he laid on top of you, what did he do with his trousers?

A He took off his long pants.

Q When he laid on top of you, what did he do to you?

A He showed his penis and inserted it to my vagina.

Q It was painful?

A Yes, sir, it was painful.

Q Did you cry?

A Yes, sir, I cried.

Q What did your father do to you when you cried?

A He told me to shut up.

Q Did anything come out from the penis of your father when he rode on top of you?

A Yes, sir.

Q What was that that came out from your father's penis?

A It was a whitish substance.

Q How long did your father place himself on top of you?

A He told me that it would not take a long time, sir.

PROSECUTOR YU:

Q Did he make a push-and-pull movement on top of you?

x x x

A Yes, sir.”[14]

Marissa Balmoria's testimony is equally straightforward and convincing, viz.:

“Q What did he do to you while you were there at the ‘tapahan’?

A He made me lie down.

PROSECUTOR YU:

Q Where?

A On the floor of the copra drier.

Q And then what did he do to you?

A He ordered me to take off my panty.

Q Did you remove your panty yourself?

A I did not remove my panty.

Q Who removed it?

A My father.

Q After removing your panty, what did your father do?

A He also undressed himself.

Q Was he wearing trousers?

A He was wearing short pants.

Q After he removed your panty, what did he do with his short pants?

A He also removed his short pants.

Q And then what did he do to you after removing his short pants?

A He placed himself on top of me, sir.

Q When he placed himself on top of you, did you feel something at the lower portion of the body of your father?

A I felt pain.

Q Why did you feel pain?

A Because he harmed me.

PROSECUTOR YU:

Q With his penis?

ATTY. AVILA:

Objection, leading.

PROSECUTOR YU:

She is a child.

Q And his penis was hard when it was inserted at that time to your vagina?

A Yes, sir.

ATTY. AVILA:

Objection, Your Honor, leading.

PROSECUTOR YU:

Q At the time you were only 8 or 10 years old?

A I was 10 years old.

Q When your father was inserting his penis into your vagina and you felt pain, did you shout?

A Yes, sir.

Q What did your father do when you shouted?

A He slapped (me) my face.

Q How many times?

A Once.

Q What did he say to you when he slapped you?

A When he slapped me he told me to shut up.

PROSECUTOR YU:

Q For how long did your father placed [sic] on top on you?

A I do not know how long was that but he actually hurt me.”[15]

Their stories were corroborated by the testimony of their aunt, Ana Gallamos, who is the sister of the appellant. Gallamos testified:

“PROSECUTOR YU:

Q Mrs. Gallamos, why are you here in this court now?

A To testify regarding the rape committed to my nieces.

Q Who [sic] are the names of your nieces?

A Marissa and Lorena.

Q The accused in this case, do you know him personally?

A Yes, sir, I know him.

Q Point him out if he is inside the courtroom.

A (The person pointed to by the witness stood up and when asked of his identity, answered that he is Cirilo Balmoria.)

Q What is he to you?

A He is my brother.

Q You said that you are here to testify regarding the rape committed by your brother to your nieces, what is that that you are going to testify?

A I am to testify here regarding the shouts that I heard from my niece sometime in May, 1993 when I heard her shouted [sic] ‘Tay, Tay, you just kill me because I can no longer resist.’

Q What did you do upon hearing the shouts of your niece?

A I went to the house where the shouts came from because my house is just near their house and when I arrived [in] their house, I saw my brother pulling up the zipper of his trousers.

PROSECUTOR YU:

Q What did you do upon seeing your brother?

A At that time, because of fear, I did not manifest or confront him but when his house was burnt and he went to Bukidnon, I invited my two nieces to sleep with me in my house. I investigated them as to what happened and they admitted that they were raped by their father for quite a long time already.

Q What did you do upon learning from your two nieces that they were being raped by your brother?

A I brought them to the Anahawan hospital to have them examined by Dr. Nanquil.

PROSECUTOR YU:

Q And what did you learn?

A The finding of Dr. Nanquil after examination revealed that the children were actually raped.

Q Why did you not confront your brother regarding the allegations made by your nieces to you?

A Because I was afraid.

Q Why?

A I was afraid because he is a troublemaker.”[16]

[Appellant’s Attacks on Complainant’s Credibility]

The defense argues that the complainants’ testimonies “contradict human nature and experience.”[17] Appellant asserts that rape, being a crime so detestable, would indelibly leave imprints on the mind of the ravished, such that she would remember the exact date, month and year it happened, which was not the case with Lorena.

We are not persuaded. This Court has repeatedly ruled that “the workings of the human mind, placed under a great deal of emotional and psychological stress (such as during rape), are unpredictable, and different people react differently. There is no standard form of behavioral response when one is confronted with a strange, startling, frightful or traumatic experience - some may shout, some may faint, and some may be shocked into insensibility.”[18] A rape victim cannot be expected to constantly recount her experience. Because a victim would rather relegate the memory of her ravishment to the recesses of her mind, she is constantly engaged in an uphill battle to forget the torment of such a traumatic event. The argument of the defense is rendered more puerile, considering that it was the victim’s father who committed the crime; thus, a ten-year-old child cannot be expected to immediately think of redress and vindication. Put differently, the details appellant found wanting do not negate the testimonies of the victims that they were raped by their father.

Other allegations of the appellant impugning the credibility of both victims hardly deserve comment. The defense argues that it was impossible for appellant to remove his pants while lying on top of Lorena. However, appellant has not demonstrated or alleged any circumstance to substantiate his claim. Common experience teaches that the act of removing one’s pants while on top of another person is possible. The accused has not shown any reason

why his arms, elbows and knees could not maneuver in such position.

The defense likewise contends that it was improbable for Lorena to have seen a whitish substance coming out of appellant's penis. Again, such contention is incorrect. She testified that the whitish substance trickled down from her vagina into her thighs, which testimony is credible and backed by common experience.

Also, the claim of Marissa that she saw the penis of her father is not incompatible with her statement that it was dark then. The yard where the crime was committed was not shown to be pitch-black, such that absolutely nothing inside could be seen. It is sufficient that she saw the outline of what was inserted into her vagina and she recognized it as part of the anatomy of her father.

Likewise, we find that the defense erred in asserting that the natural reaction of Marissa upon seeing blood from her vagina should have been "to panic or [to] seek assistance." [19] The sight of blood does not always galvanize one into a state of hysteria or frenzy. Sometimes it leaves people dazed and dumbfounded, as was probably the mental state of herein victim, Marissa. Indeed, we reiterate that different people react differently to startling circumstances.

Finally, the defense assails the credibility of the prosecution witnesses by arguing that, since the house where the rape happened was a one-room structure with no partition, it was improbable for the appellant to commit such a dastardly act in the presence of the other children. *People v. Dabon* [20] refutes the argument, for the Court there acknowledged that "it is a matter of judicial acceptance that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, and even inside a house where there are other occupants. Lust is no respecter of time and place." In fact, it is of record that both private complainants, who are sisters, were not only victims of their father's perversity; they were also eyewitnesses of each other's shame and horror.

[Extraneous Evidence Immaterial in This Case]

It is further alleged by the defense that the trial court utilized pieces of evidence that were foreign and extraneous to the records. In respect of Lorena Balmoria's testimony, the trial court found:

"That her father told her not to reveal what he did to her or else, he will kill her and her sister, brother and mother with the use of a small bolo used in stripping abaca locally known as "tuksi." [21]

In the case of Marissa, these were the findings of the trial court:

"x x x After he made his push and pull movements, Marissa alleged that she saw blood and some whitish substance come out from her vagina. He further told her not to tell any one about this incident otherwise, he will kill her, her family with a very sharp bolo used to strip abaca locally called "tuksi." Marissa knows her father always to be drunk and violent, so, for fear of her life and that of her family, she kept silent about what had been done to her by her father. Marissa further testified that she had been ravished by her father for at least six (6) times more until sometime in May, 1993. Marissa also alleged that she witnessed her father raping her younger sister, Lorena." [22]

It is true that these alleged statements of both private complainants about being threatened with a tuksi were not reflected in the records. However, the conviction of the accused did not rest on these extraneous findings and imprudent statements of the trial court. Rather, it was firmly anchored on the credible testimonies of the two victims. "What is important is the victim's testimony that the accused sexually abused her. When a victim says that she has been raped, she says in effect all that is necessary to show that rape has been committed and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof." [23]

In this case, both Lorena and Marissa were unequivocal and unswerving in identifying appellant as the author of

the two incidents of rape. Their testimonies were straightforward, detailed, and consistent on all material points. Hence, we believe them.

[Appellant's Defense of Alibi Debunked]

In support of his alibi, appellant alleges that on January 28, 1991, he worked in the abaca farm of his father until four o'clock in the afternoon, after which he dropped by his house to change his wet clothing. As his daughters were allegedly not yet home then, he proceeded to his father's house and engaged in a drinking spree with his friend Gerardo Carcasona beyond ten o'clock in the evening. Thus, he avers that he could not have raped Marissa at seven-thirty in the evening of that day since he was not home at that time.

He likewise claimed that on January 29, 1991, he worked in the abaca farm of his father until four o'clock in the afternoon and did not come home for lunch. He stated that his daughters took their lunch in their school; therefore, he could not have raped Lorena at noontime of that fateful day.

We are not convinced. "Courts have always looked upon the defense of alibi with suspicion and have always received it with caution not only because it is inherently weak and unreliable but because it is easily fabricated. For alibi to serve as basis for acquittal, it must be established with clear and convincing evidence. The requisites of time and place must be strictly met. Appellant must convincingly demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission." [24]

Appellant herein has not substantiated his claim of alibi with clear and convincing evidence. No other witness was presented to corroborate his alibi on either occasion. Gerardo Carcasona, who was his alleged drinking partner on January 28, 1991 and who could have buttressed his nebulous claim, did not take the witness stand. Neither did appellant present his father to testify that he was indeed working in the farm at the time and date mentioned. Appellant himself failed to prove the distance between the farm and the house where the crime was committed. Clearly, the defense utterly failed to show that it was physically impossible for appellant to have been at the locus criminis at the time of the alleged crime.

In any event, the defense of alibi must fail in view of the positive identification of the accused by the victims, Lorena and Marissa. The rule is that affirmative testimony is far stronger than a negative one, especially when it comes from the mouth of a credible witness. [25] In this case, the credibility of both witnesses has been positively established.

[No False Accusation of Rape]

Appellant would have us believe that he was accused of rape by his daughters, because they were mad at him for punishing them whenever they failed to attend classes. He also alleged that his own sister supported the accusation of his daughters because they were estranged. The absurdity of such contention is beyond belief. "Family relations are not so easily imperiled, with the father at risk of being imprisoned for banal and flimsy reasons, such as that alleged by the accused." [26] Furthermore, "it is difficult to imagine that a young girl would undergo the indignities and difficulties concomitant to a prosecution for rape unless motivated by a desire to have the offender apprehended and punished. The embarrassment and stigma alone of allowing an examination of her private parts and testifying at a public trial on the painfully intimate details of her violation practically rules out the possibility of a false accusation of rape." [27]

[Crime Committed]

The trial court convicted appellant of statutory rape under Art. 335, par. 3 of the Revised Penal Code. [28] We do not agree. The two Informations in this case did not allege statutory rape but rape "by means of deceit, force and

intimidation and taking advantage of the confidence afforded by the offended party, xxx, to him as a father.” Nonetheless, we hold appellant liable for rape as alleged in said Informations, i.e., committed by use of force and intimidation on the two victims, under Art. 335, par. 1, of the said Code. As earlier stated, the evidence clearly shows that appellant employed force in raping his two daughters.[29] In any event, the Court has held that “even if there was no violence or force employed against [the daughter], the moral influence of accused-appellant [father] over [his daughter] sufficed to make the crime rape,”[30] particularly in this case where the victims were only 8 and 10 years of age, respectively, at the time they were violated.

In the light of the foregoing, this Court’s conscience rests easy on the moral certainty that Appellant Cirilo Balmoria has been proven guilty beyond reasonable doubt of the crime charged.

[Penalties]

The trial court correctly awarded civil indemnity in the amount of P50,000 per victim, an award which is automatically granted to the offended party without need of further evidence other than the fact of the commission of rape.[31] The trial court likewise correctly appreciated the alternative circumstance of relationship provided for in Article 15 of the Revised Penal Code, considering that the offended parties were appellant’s direct descendants. In crimes against chastity, such as rape, relationship is aggravating.[32] However, this circumstance will not affect the penalty of reclusion perpetua because it is an indivisible penalty which, under Article 63 of the Revised Penal Code, must be applied regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime.[33]

RA 7659 amended the Revised Penal Code and, among others, prescribed the death penalty where the rape victim is under 18 years of age and the offender is her father. The said amendatory law, however, cannot be applied in this case, inter alia, because the two incidents of crime were perpetrated in January 1991, that is, before the effectivity of the said law.

WHEREFORE, the appeal is hereby DENIED and the appellant is CONVICTED of rape under Art. 335, par. 1, of the Revised Penal Code, but the penalties imposed by the trial court are AFFIRMED, as above discussed.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug and Quisumbing, JJ., concur.

[1] Penned by Judge Jose H. Mijares.

[2] Record of Criminal Case No. 1089, pp. 23-24; Record of Criminal Case No. 1090, pp. 23-24.

[3] Decision, p. 8; Rollo, p. 31.

[4] The case was deemed submitted for resolution on August 9, 1996 upon receipt by this Court of the appellee’s brief.

[5] This narration was adopted and reproduced in the appellee’s brief, dated August 7, 1996 and prepared by ASG Cecilio O. Estoesta and Solicitor Nelson L. Guerrero.

[6] Decision, pp. 2-5; Rollo, pp. 25-28; TSN, February 21, 1994, pp. 5-13 & 19-24.

[7] Appellant’s brief, pp. 7-8; Rollo, pp. 51-52. The appellant’s brief was signed by Public Attorney IV Arcel Adan-Rubin, Public Attorney II Amelia C. Garchitorea and Public Attorney II Elpidio C. Bacuyag.

[8] Ibid., pp. 8-9; Rollo, pp. 52-53.

[9] *People vs Julian*, G.R. Nos. 113692-93, April 4, 1997; *People vs Perez*, G.R. No. 118332, March 26, 1997; *People vs Ramirez*, 266 SCRA 335, January 20, 1997; *People vs Guamos*, 241 SCRA 528, February 21, 1995; *People vs Casinillo*, 213 SCRA 777, September 11, 1992.

[10] *People vs Perez*, *supra*; *People vs Domingo*, 226 SCRA 156, September 8, 1993.

[11] *People vs De Guzman*, 188 SCRA 405, 410-411, August 7, 1990, per Cruz, J.

[12] *People vs Judy Reyes*, G.R. No. 91262, January 28, 1998.

[13] Decision, p. 6; Rollo, p. 29.

[14] TSN, February 21, 1994, pp. 5-8.

[15] TSN, February 21, 1994, pp. 19-22.

[16] TSN, June 27, 1994, pp. 3-6.

[17] Appellant's brief, pp. 11-12; Rollo, pp. 55-56.

[18] *People vs Pontillar, Jr.*, G.R. No. 104865, July 11, 1997, per Panganiban, J.; *People vs San Juan*, G.R. No. 105556, April 4, 1997; *People vs Gumahob*, 265 SCRA 84, November 28, 1996; citing *People vs Malunes*, 247 SCRA 317, August 14, 1995; *People vs Alih*, 222 SCRA 517, May 24, 1993.

[19] Appellant's Brief, p. 12; Rollo, p. 56.

[20] 216 SCRA 656, December 16, 1992, per Regalado, J., citing *People v. De los Reyes*, 203 SCRA 707, November 19, 1991; *People v. Mangalino*, 182 SCRA 329, February 15, 1990; *People vs San Juan*, *supra*; *People vs Dones*, 254 SCRA 696, March 13, 1996.

[21] Appellant's brief, p. 53; citing the Decision, p. 3; Rollo, p. 53.

[22] Appellant's brief, p. 10; citing the Decision, pp. 3-4; Rollo, p. 54.

[23] *People vs Julian*, *supra*; *People v. Perez*, *supra*.

[24] *People vs Julian*, *supra*; *People vs Cañada*, 253 SCRA 277, February 6, 1996; citing *People vs Querido*, 229 SCRA 753, February 7, 1994.

[25] *People vs Ramirez*, *supra*; *People vs Digno, Jr.*, 250 SCRA 237, November 23, 1995.

[26] *People vs Perez*, *supra*, per Romero, J.

[27] *People vs Pontillar*, *supra*; *People vs Ramirez*, *supra*; *People vs Dela Cruz*, 251 SCRA 77, December 8, 1995; *People vs Sanchez*, 250 SCRA 14, November 16, 1995.

[28] The Revised Penal Code states that rape can be committed in the following ways:

“ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

(1) By using force or intimidation;

(2) When the woman is deprived of reason or otherwise unconscious and

(3) When the woman is under 12 years of age or is demented.

x x x x x x x x ”

[29] TSN, February 21, 1994, pp. 6, 21-22.

[30] People vs Bugarin, G.R. No. 110817-22, June 13, 1997, p. 15; per Mendoza, J

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

[32] People vs Porras, 58 Phil. 578, October 16, 1933; People vs Lucas, 181 SCRA 316, January 22, 1990.

[33] People vs Matrimonio, 215 SCRA 613, November 13, 1992; citing People vs Porras, supra; People vs Lucas, supra.

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