

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERIBERTO MAGLENTE Y CABAUG, ACCUSED-APPELLANT.

G.R. Nos. 124559-66. April 30, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Quezon City, Branch 78 (Judge Percival Mandap Lopez, presiding), finding accused-appellant Eriberto Maglente y Cabahug guilty of eight (8) counts of rape and sentencing him, in each case, to suffer the penalty of death and to indemnify the victim in the amount of P100,000.00, as moral damages, and P50,000.00, as exemplary damages.

Complainant Maylene (Mylene) Q. Maglente is accused-appellant's own daughter. She is the eldest child of spouses Eriberto Maglente and Rebecca Q. Maglente.[2] Mylene and her two other sisters, Monalisa and Maritess, then aged 16 and 14, were left in the care of their father, as their mother Rebecca left on January 2, 1994 to work as a domestic helper in Hongkong.[3]

In eight (8) separate complaints[4] filed on September 15, 1995, Mylene accused her father of raping her on eight different occasions in 1995. Except as to the date appearing therein, the complaints commonly allege as follows:

The undersigned accuses ERIBERTO MAGLENTE y CABAUG, father of the undersigned, of the crime of Rape, committed as follows:

That on or about the [date[5]] in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously undress said MAYLENE MAGLENTE y QUENDANGAN, 17 years of age and put himself on top of her, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY TO LAW.

When arraigned, accused-appellant pleaded not guilty to the eight (8) charges of rape against him. The cases were then jointly tried.

The prosecution presented complainant Mylene Q. Maglente who narrated how, on the eight (8) occasions mentioned in the informations, she was raped by her father. She testified:

On April 15, 1995, at about 3 o'clock in the morning, while she was asleep in their house at 125 St. Catherine Street, Barangay Holy Spirit, Quezon City, she was awakened by accused-appellant. Thinking that it was time to prepare their breakfast, she proceeded to the kitchen. There, she was grabbed by accused-appellant who covered her mouth and told her not to make any noise, otherwise she would get hurt. Accused-appellant told her not to resist and dragged her to his bedroom. Once inside the bedroom, accused-appellant ordered her to sit on the bed as he placed his hand inside her t-shirt, lifted her bra, and fondled her breasts. Accused-appellant removed her shorts, touched her private parts, undressed her, and forcibly inserted his penis into her private organ. She could not remember how long accused-appellant's penis was inside her private organ because she was afraid and did not

know what to do. After she was released, she went to the bathroom and washed herself because she felt dirty. Afterwards, she went under the table and cried.[6]

On April 28, 1995, at about 2 o'clock in the morning, accused-appellant again raped her although, because of her resistance, he failed to achieve full penetration and only succeeded in rubbing his penis ("kiniskis lang po niya pero hindi niya ipinasok") against the opening of her vagina ("doon po sa pinakabuka"). On that day, accused-appellant slept on the same bed with his children because their place was flooded and his bed got wet.[7]

On May 1, 1995, accused-appellant again raped her. This was done inside complainant's bedroom.[8]

On May 24, 1995, she resisted accused-appellant's sexual attack, but the latter boxed her. Accused-appellant thus succeeded in having sexual intercourse with her.[9]

On June 20, 1995, accused-appellant arrived home drunk. He pulled her from her bed and took her to his bedroom where he ravished her. Accused-appellant also kissed and inserted his fingers into her private parts. As in previous instances, she did not complain to the police for fear that her two younger sisters might suffer the same fate she did.[10]

On July 9, 1995, between 3:30-4:00 in the morning, accused-appellant took her to his bedroom where he raped her.[11]

On July 31, 1995, accused-appellant was able to rape complainant despite her resistance by kicking her and thus rendering her helpless.[12] The rape was committed inside accused-appellant's bedroom. On cross and re-cross-examination, she clarified the date to be July 31, 1995, and not July 30, 1995 as stated in her Salaysay, dated September 14, 1995, and in the transcript of stenographic notes.[13]

Finally, on September 11, 1995, at about 1 o'clock in the morning, complainant was again raped by accused-appellant inside his bedroom, hours after he had beaten up Mylene and her sisters.[14] On re-cross-examination, complainant said that the date (September 10, 1995) appearing in her Salaysay of September 14, 1995 and in the transcript of stenographic notes should read September 11, 1995.[15]

Mylene left their house on September 11, 1995 and stayed in a friend's house. Before doing so, however, she related her ordeals to her sister Monalisa. She kept quiet and never reported these rapes to any other person as she was afraid of accused-appellant until her grandaunt Maria Codera found her. On September 14, 1995, they sought the assistance of two police officers and proceeded to Police Station Six, SIID, CPDC on Commonwealth Avenue, Quezon City. Mylene gave her sworn statement (Exh. C)[16] to PO3 Jovencio Villacorte. Rebecca (complainant's mother) also gave a sworn statement to PO3 Villacorte alleging that the rapes were reported to her by Paz Codera (Maria Paz Codera) when she was still in Hongkong.[17] Mylene wrote down on a piece of paper (Exh. B)[18] the dates, time, and behavior of accused-appellant when he raped her so that she could tell her mother when the latter arrived from abroad.[19]

On cross-examination, Mylene reiterated her claim that accused-appellant had raped her on eight (8) different occasions enumerated in a piece of paper (Exh. B).[20]

Complainant's mother, Rebecca, filed a motion in the trial court seeking custody of Mylene as she was then in the care of Paz Codera. The motion was denied after Mylene refused to go with her mother and expressed a desire to live instead with her maternal grandparents, Samiro Quendangan and Auring Bungag.[21]

Rebecca Maglente was scheduled to testify, but her testimony was dispensed with after the parties stipulated that Rebecca is legally married to accused-appellant and that Mylene is their daughter.[22]

Dr. Rosaline O. Cosidon, medico-legal officer of the Philippine National Police (PNP), examined Mylene on

September 13, 1995.[23] Her report (Exh. D)[24] reads in pertinent parts:

FINDINGS:

....

GENITAL:

There is moderate growth of pubic hair. Labia majora are full, convex and coaptated with the congested labia minora presenting in between. On separating the same is disclosed a congested and elastic, fleshy-type hymen with shallow, healed lacerations at 3, 6 and 9 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of recent application of any form of trauma at the time of examination.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.

Dr. Cosidon testified that Mylene's physical condition ("non-virgin") could have been caused by the insertion of a foreign object.[25] She stated that the healed lacerations at 3, 6, and 9 o'clock positions were more than seven days old but, due to the congestion at the labia minora, it was possible there was sexual intercourse two days before the examination.[26] In addition, she said, she found contusions in the following areas of Mylene's body: right knee (Exh. E-1), left knee (Exh. E-2), and left elbow (Exh. E-3) as shown in the Medico-Legal Sketch (Exh. E).[27] The contusions could be more than one day old or, possibly, two to three days old.[28]

On cross-examination, she said that the "non-virgin" condition of Mylene was due to the laceration of her hymen which could have been caused by the insertion of a foreign object like an eggplant or by sexual intercourse or masturbation. The laceration was shallow because it did not penetrate the whole width or base of the hymen.[29]

She corrected the statement in her report that "there are no external signs of recent application of any form of trauma at the time of examination." She said that there actually were contusions sustained but through inadvertence she had failed to state this fact. A supplemental anatomical sketch was prepared after examining Mylene last September 13, 1995.[30]

PO3 Jovencio Villacorte of Station 6, PNP, CPDC, SIID, IBP Lane on Commonwealth Avenue, Quezon City, said that on September 14, 1995 he conducted an investigation of the alleged rapes and prepared the affidavit of Mylene as well as the referral letter to the City Prosecutor of Quezon City.[31] Villacorte said that Mylene was accompanied by Paz Codera to their station. Mylene looked frightened and cried while she gave her statement, but she related her story without any assistance or coaching from Paz Codera.[32]

The defense presented as its sole witness accused-appellant Eriberto Maglente y Cabahug. He testified that he formerly worked as a security guard while his wife Rebecca Maglente worked as a manicurist and hair stylist until she left for Hongkong on January 2, 1994 to work as a domestic helper. The children were left to his care.[33]

Testifying on the eight (8) occasions when he allegedly raped his daughter, accused-appellant said:

On April 14, 1995, it being a Good Friday, he stayed at home and did not report for work. He did some laundry and at 3 o'clock in the afternoon, he and his children went to the BF Homes Chapel, returning home at about 7

o'clock in the evening. After supper, they watched television and slept at 10 o'clock. He did not drink liquor before going to sleep. He woke up the following day, April 15, 1995, at 8 o'clock in the morning and did not report for work. He did not get up from bed and go to his children's bedroom before that time.[34]

He recalled that the weather was very humid when he arrived home at 9 o'clock in the evening on April 27, 1995. He slept at 10 o'clock and woke up at 6 o'clock the following morning, April 28, 1995. He denied that he got up from his bed before that time and went to the room of his daughter.[35]

On May 1, 1995, it being a non-working day, he did not get up until 8 o'clock in the morning, although his children woke up earlier. He went to bed between 10 o'clock and 11 o'clock in the evening of April 30, 1995 and did not get up earlier than 8 o'clock in the morning of the next day in order to go to his children's room.[36]

On May 24, 1995, according to him, no unusual incident happened, particularly at 1:30 in the morning. He got up at 6 o'clock in the morning on that day because he had to report for work. He denied having hit his daughter.[37]

On June 20, 1995, he again woke up at 6 o'clock in the morning. He denied he ever went to his children's bedroom before that time.[38]

He likewise denied that he went to the room of his children on July 9, 1995 at around 2:30 in the morning. He did not get up from bed until 8 o'clock in the morning, as it was Sunday. He went to the market with his daughter Maritess. Mylene and Monalyn (Monalisa) stayed in the house to clean it.[39]

On July 30, 1995, it being a Sunday, he did not get up from bed until it was 8 o'clock in the morning. He denied getting out of his room at about 1 o'clock that morning. He said that his children went to the house of their Aunt Maria (sister of his wife Rebecca) and visited their cousins and other relatives.[40]

On September 10, 1995, he admitted, he had beaten his children ("Napalo ko ang mga anak ko") because they had lost the key to their house. At that time, his three children were already staying with their grandaunt, Paz Codera. Paz Codera is especially close to Mylene because she wanted to have Mylene as her own daughter. According to accused-appellant, after beating and scolding his children, he sent them to bed at 8 o'clock that evening, while he watched television to forget his anger. He went to bed and slept at 10 o'clock. He woke up the following morning, September 11, 1995, at 6 o'clock and then went to work. When he arrived home that night, Mylene had already left.[41]

Accused-appellant stated that Mylene probably filed the rape charges against him because he had beaten her. He surmised that Paz Codera instigated her to file the complaints because of a previous misunderstanding he had with her over a P25,000.00 loan which Paz Codera owed him.[42]

Mylene Q. Maglente was recalled to the stand to disprove the claim of accused-appellant that Paz Codera was behind the filing of the rape charges against accused-appellant. She also denied that there was a misunderstanding between Paz Codera and accused-appellant regarding money matters.[43] Mylene stated that her father had advanced the payment for the house of Paz Codera, but the latter had since repaid the loan. She said Paz Codera had been supportive of her since the time of filing of the cases.[44]

The trial court warned complainant that, if proven guilty, her father could be sentenced to death. However, complainant stood by her testimony that accused-appellant indeed raped her.[45]

On April 8, 1996, the trial court rendered a decision finding accused-appellant guilty of all counts of rape. The dispositive portion of its decision reads as follows:

WHEREFORE, the Court finds ERIBERTO MAGLENTE Y CABAUG guilty beyond reasonable doubt for eight (8) counts of rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by

Section 11 of Republic Act 7659 and is hereby sentenced to suffer the penalty of:

- DEATH for Criminal Case No. Q-95-63093;
- DEATH for Criminal Case No. Q-95-63094;
- DEATH for Criminal Case No. Q-95-63095;
- DEATH for Criminal Case No. Q-95-63096;
- DEATH for Criminal Case No. Q-95-63097;
- DEATH for Criminal Case No. Q-95-63098;
- DEATH for Criminal Case No. Q-95-63099; and,
- DEATH for Criminal Case No. Q-95-63100.

Said accused is likewise ordered to pay the complainant the amount of ONE HUNDRED THOUSAND (P100,000.00) PESOS as moral damages and FIFTY THOUSAND (P50,000.00) PESOS as exemplary damages.

SO ORDERED.

Accused-appellant assails the judgment of conviction, contending that:

- THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE INCONSISTENCIES OF THE TESTIMONY OF THE COMPLAINANT AND THE INSUFFICIENCY OF THE ENTIRE EVIDENCE FOR THE PROSECUTION.
- THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT THE PROSECUTION FAILED TO PROVE THE ACCUSED-APPELLANT'S GUILT BEYOND REASONABLE DOUBT.

Accused-appellant's contentions will be discussed seriatim.

To begin with, it is hardly necessary to say that the trial court's findings carry great weight and deserve respect and will be sustained on appeal unless the court overlooked some facts or circumstances of weight and substance which will alter its findings. The evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination.[46] In these cases, the Court notes the categorical, clear, and positive testimony of Mylene regarding every incident of rape committed against her by accused-appellant and how, despite withering cross-examination by the defense counsel, she remained steadfast in her claim that her father had violated her. Our own review of Mylene's testimony confirms the conclusion of the trial court that her testimony deserves full faith and credence.

Alleged Inconsistencies in Complainant's Testimony

Accused-appellant claims that the prosecution's evidence is contradictory and is flawed due to serious inconsistencies and improbabilities in material points. He cites the testimony of complainant on direct examination that she remembered the dates she was allegedly raped by accused-appellant because she wrote them down[47] and her answer to the question of the court that the dates were written on the piece of paper marked Exhibit B "in one sitting" only. On this point, the transcript of stenographic notes shows the following:[48]

ATTY. URBANO: [on cross-examination]

. . . .

You earlier produced a piece of paper with dates thereon. My question is - When did you write those dates[?]

A The first time he raped me, sir.

Q

You mean to say you already prepared all those dates during the first time that you were allegedly raped by your father?

A No, sir. I had to think hard on what to do so that my mother would know what was happening, sir.

Q

I am showing to you this piece of paper earlier marked as Exh. "B." Madam Witness, I noticed that all these writings are in black. Do you mean to say that you only used one ballpen in writing these?

ANSWER:

Yes, sir.

Q And you were able to religiously write these dates.

A

The other dates I failed to write down on that list but I had to look at the calendar and from there I could tell on the dates that he raped me, sir.

Q So you were not contradicting your earlier testimony that you wrote down each date after each rape that occurred.

A

Others I recall but others I wrote down because I was too busy, I have to go to school, I have to attend my classes and then upon arrival at home, I have to do the household chores, sir.

COURT:

All right, this handwriting containing the dates from April 15, 1995 to September 10, 1995, did you write the entries in this document on different dates or on one date only.

A I only wrote that down in one (1) sitting, sir.

ATTY. URBANO:

And I understand that you wrote all these dates on September 13, 1995, is that correct?

A Yes, sir.

It is apparent that complainant could not follow the line of questioning. Thus, although to the question "when did you write those dates?" she answered, "The first time he raped me, sir," when further queried, "You mean to say you already prepared all those dates during the first time that you were allegedly raped by your father?," she categorically said, "No, sir." What is clear is that the dates she wrote on Exhibit B were written "in one (1) sitting" on September 13, 1995 based on what she had previously recorded with respect to some dates and on what she remembered after consulting the calendar.

The defense also tried to show another seeming contradiction in the testimony of complainant:[49]

ATTY. URBANO: [on cross-examination]

. . . .

Q

You also said that on April 14 you slept at about 9:00 o'clock in the evening and woke up the following morning at 6:00 o'clock in the morning. . .

COURT:

[To the cross-examiner] Where is that?

ATTY. URBANO:

I am referring to page 19 of the transcript, your Honor. First question-- What time did you go to bed in the night of April 14, 1995? Answer-- 9:00 o'clock, sir. And then-- What time did you wake up the following morning? A-- 6:00 o'clock, sir.

. . . .

QUESTION:

So how would you explain your two (2) conflicting answers? On the one hand you woke up at 6:00 o'clock in the morning and that you were raped at 3:00 o'clock in the morning of the same day, April 15, 1995?

ANSWER:

It is really true that he raped me on April 15, sir.

Q How would you explain that there is a conflict in your answer, how will you explain?

A Because what he really did to me was painful and I felt it that is why I remembered, sir.

....

QUESTION:

You mean to say, Madam Witness, that after you were raped by your father, you were able to sleep?

ANSWER:

No more, sir.

Q So why did you say that you woke up at 6:00 o'clock on the said date?

A

Because I did not go back to sleep anymore and I prepared our food because that has been my usual work to prepare our breakfast, sir.

It is clear that although complainant said she woke up at 6 o'clock in the morning, thereby seemingly belying her claim that she had earlier been raped by accused-appellant at 3 o'clock, what she meant was that she got out of bed at 6 o'clock in the morning. However, she had been awake since 3 o'clock after she had been abused.

Alleged discrepancies in the dates when complainant said she was raped were explained by her as follows:[50]

Q What about on July 30, 1995, do you remember of any unusual incident that happened to you?

A There was, sir. It was in their bedroom that he raped me, sir.

Q When you say their room (kuwarto nila), which room?

A

The room of my father and mother, sir.

....

Q When you said that you were raped, are you trying to say, Madam Witness, that he was able to penetrate your vagina?

COURT:

When?

ATTY. URBANO:

On that particular date, your Honor, July 30?

ANSWER:

Yes, sir because even if I was putting a fight I could not do anything because my sisters were not present and we were in their room.

QUESTION:

During the last hearing, Madam Witness, you identified the Sinumpaang Salaysay which was marked as Exhibit "C," and this exhibit, this sworn statement you executed before the police, you answered to the question "Matatandaan mo ba kung anu-anong petsa at oras ang mga pangyayaring ito?"

COURT:

What question?

ATTY. URBANO:

Question No. 6, your Honor, and in particular-- you said that on the 7th time-- ika-pito po ay ika 30 ng Hulyo, 1995, ala 1:40 ng madaling araw.

. . . .

A

The truth is the rape occurred on July 31 and that was the last day when my Auntie arrived and so we have to leave for the province, sir.

Q

So you are saying now in your testimony that this alleged rape took place on July 30 is not correct? So there was no rape on July 30?

A No, sir. It was on July 31.

Q So you are saying that your testimony in this Court in this particular instance is not correct?

A

Everything that I have stated in this Court are correct and maybe the date only is not correct because what you said is July 30.

Q Are you saying, Madam Witness, that there were two (2) rapes on July 30 and July 31?

A No, sir. Only once and that was on July 31.

Q So on September 10, 1995, Madam Witness, do you remember of any unusual incident which happened to you?

A Yes, sir.

ATTY. URBANO: [on cross-examination]

QUESTION:

And what was that?

ANSWER:

He beat us up (binugbog kami), sir.

Q To whom are you referring to as the one who beat you up?

A My father, sir. After beating us, he used (ginamit) me.

Q What do you mean by he used you?

A He raped me, sir.

Q When did he rape you?

A September 10, sir.

Q What time?

A I think it was 3:00 o'clock, sir.

Q Three (3:00) o'clock in the morning or in the afternoon?

A Early morning, sir.

Q Do you still recall, Madam Witness, what date you returned to your house...I withdraw the question, your Honor.

Before September 10, 1995, Madam Witness, where were you staying?

A At the house of my Auntie which is near our house at Fairview, sir.

Q And how long have you been staying at your Auntie's house before September 10, 1995?

A

Since we returned from the province I have been staying with my Auntie and before he raped me, I went to Sacrifice Valley and when I returned my Auntie was no longer there so I had to sleep in our house and that was the time I was raped, sir.

ATTY. URBANO: [on cross-examination]

QUESTION:

So when exactly did you return to your house, Madam Witness?

ANSWER:

In the afternoon of September 9[51] which was a Sunday, sir.

Q You mean to say that you returned to your house on Sunday of that date, Madam Witness?

A

It was Sunday afternoon that I went home. That was the time we were beaten up and early morning I was raped and when I can not endure any longer I left our house the following morning, sir.

Q

So it is not possible that you were raped on September 10, 1995 because September 10 is a Sunday and you said that you were raped at the early morning at 3:00 o'clock of September 10, 1995, the following day?

COURT:

[To the cross-examiner] She said she went back on the 9th. She went back to the house on the 9th and then early morning, the following day, that was the time when she was raped.

ATTY. URBANO:

According to her, your Honor, after she was beaten up, she was raped.

COURT:

Yes, in the morning already.

ATTY. URBANO:

September 11?

COURT:

September 9 she went home. The following morning, September 10. All right, you ask your question.

ATTY. URBANO: [on cross-examination]

QUESTION:

Madam Witness, you earlier testified that you were raped on September 10 at 3:00 o'clock in the morning, are you maintaining that answer?

ANSWER:

Yes, sir because that was a Sunday.

Q And that you were raped after your father beat you up and your other sisters, is that what you are saying?

A Yes, sir.

Q So you mean to say, Madam Witness, that your father beat you up and your sisters on Saturday, September 9?

A

We came back from Sacrifice Valley early morning of Sunday then at about 6:30 in the evening on the same day, we were beaten up by my father and then I was raped at about 3:00 o'clock in the morning of Monday, sir.

Admittedly, there are certain discrepancies in the testimony of complainant regarding the exact dates she was allegedly raped. The lapses, however, are inconsequential and are doubtless due to the fact that complainant was raped in the wee hours of the morning, between 2 o'clock and 3 o'clock in the morning. A young girl like complainant could easily be mistaken as to the date the incident happened, i.e., whether it was on July 30 or July 31, 1995 (when complainant was allegedly raped for the seventh time), and whether it was on September 10 or September 11, 1995 (when she was allegedly raped for the eighth time). If the discrepancies amounted to differences in dates in the magnitude of the difference, say, between July 20 and July 31, 1995 or between September 1 and September 11, 1995, there might arise doubt as to the truthfulness of complainant. But that is not so in these cases. The lapses are insignificant and they are to be expected of a young and inexperienced girl like complainant. Far from detracting from her veracity, these minor inconsistencies in fact tend to bolster it.[52]

Indeed, anyone reading complainant's testimony given during cross-examination will not fail to be impressed by

the earnestness and candor with which it was given:[53]

ATTY. URBANO: [on cross-examination]

....

Q

So you admit also, Madam Witness, that the dates and time you wrote in that list may not be correct, is that correct, Madam Witness?

A They are all correct, sir.

Q How can you say that it is correct when you just try to recall those dates and time in one sitting, Madam Witness?

A

I am sorry, they are all correct because if the same thing happen to anybody, it will always be remembered just as I have remembered all the "kababoyan" that was done to me, sir. . . .

It is indeed incumbent upon the prosecution to establish the guilt of the defendant beyond a reasonable doubt but to justify acquittal based on reasonable doubt, the doubt should relate to the facts constitutive of the crime charged.[54] Discrepancies should touch on significant facts which are crucial to the guilt or innocence of an accused.[55] Conversely, inconsistencies and discrepancies in details which are irrelevant to the elements of the crime are not grounds for acquittal.[56] We stress that the exact date when complainant was sexually abused is not an essential element of the offense of rape.[57] What is material in a rape case is the commission of the rape by the accused-appellant against the complainant. Thus, Art. 335 of the Revised Penal Code, as amended by Republic Act No. 7659, provides:

Article 335. When and how rape is committed. $\frac{3}{4}$ Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and,
- When the woman is under twelve years of age or is demented. . . .

Complainant's Inconsistency as to Whether or not
Commission of Rape is an "Unusual Incident"

Accused-appellant makes much of the fact that when asked whether or not an "unusual incident" took place on the dates she was allegedly raped, she said there was "no unusual incident that happened to her" on May 1, 1995 (when she was allegedly raped for the third time), May 24, 1995 (when she was allegedly raped for the fourth time), and July 9, 1995 (the sixth time she was allegedly raped), while there was no testimony to that effect regarding the alleged rape on June 20, 1995. Again it is clear complainant did not understand what the phrase means.

Complainant's statement that "no unusual incident happened" on the specified dates was amply explained by her

during the re-direct examination from which it is clear that she did not really understand what the phrase "unusual incident" means. She testified:[58]

ATTY. QUENDANGAN: [on re-direct examination]

....

Q

Madam Witness, during your direct examination, another question was put to you, quote - "When for the third time did your father rape you? Answer - May 1, sir." Do you still recall that?

A Yes, sir.

Q

During your cross-examination, a question on the same matter was put to you, quote - "So do you remember of any unusual incident on that date, May 1, 1995? Answer - No, sir. I cannot remember." Do you still remember that?

A Yes, sir.

Q Madam Witness, would you describe or refer on that rape which transpired on May 1, 1995 as an unusual incident?

A Yes, sir.

COURT:

Now, if you regard that third rape as an unusual incident, why did you answer on cross-examination that nothing unusual happened on May 1?

A I was raped on May 1, sir. It was an unusual incident, sir.

COURT:

How come that on cross-examination, you said that no unusual incident happened on May 1.

A

Yes, sir. I was really raped on May 1. In fact, I had been raped eight (8) times until September 10, sir. The truth is, I was really raped.

COURT:

On May 1?

A Yes, sir.

COURT:

Proceed.

ATTY. QUENDANGAN:

Also during the direct examination Madam Witness, a question was put to you, quote - "When for the fourth time did he again rape you? Answer - May 24, sir." Do you remember that?

A Yes, sir.

Q

And in cross-examination, a question was put by Atty. Urbano to you, quote - "On May 24 Madam Witness, do you remember any unusual incident that happened to you? Answer - None, sir." Do you recall that?

A Yes, sir.

COURT:

Why did you answer that no unusual incident happened when according to you [you] were raped.

A Yes, sir, I was really raped on that occasion.

ATTY. URBANO:

Your Honor, may I move that the answer of the witness be stricken off the record for not being responsive to the question.

COURT:

Let it remain on record.

[to the witness]

The question is - when you were asked if there was an unusual incident that happened on May 24, you said none. And yet you said that you were raped on that date. Do you consider being raped not an unusual incident?

A

Yes, sir. That was an unusual incident because I had been raped eight (8) times.

COURT:

Then why did you say on cross-examination, when you were asked, if there is an unusual incident that happened on May 24 and you answered none.

A I only made a mistake that time, sir.

COURT:

What was your mistake? That nothing happened or you were raped?

A Because I was already confused when I was being asked, sir.

COURT:

Proceed.

ATTY. QUENDANGAN: [on re-direct examination]

Will you please tell the Honorable Court Madam Witness your understanding of the question unusual incident.

ANSWER:

The way I understood it was that nothing happened, sir.

Q

On direct examination Madam witness, I asked you the question, quote - "Now, when for the sixth time did your father, Eriberto, raped you? Answer - July 9, sir." Do you still recall that?

A Yes, sir.

Q

But during cross-examination, a question was put to you by Atty. Urbano, quote - "What about on July 9? Answer - None, sir." Do you also recall that?

A Yes, sir. I remember that.

Q Madam Witness, would you describe or refer on that rape which transpired on July 9, 1995 as an unusual incident?

....

ANSWER:

No, sir.

COURT:

What do you mean no, sir. Do you consider being raped unusual or not unusual.

A It's an unusual incident, sir.

Complainant's Clarification of the Discrepancies and
Contradictions in her Testimony

Complainant clarified the discrepancies as to the dates she was sexually assaulted and her answers that she did not regard the incidents "unusual." She explained:[59]

ATTY. URBANO: [on re-cross-examination]

So when did again the alleged rape took place.

ANSWER:

After we were beaten up and that was on a Sunday, the following early morning, that was the time when I was raped. So that means it is September 11 already, sir.

....

Q

You testified a while ago Madam Witness that during your direct testimony, you said that the seventh rape took place on July 31. When in truth and in fact, during your direct, you actually said July 30, 1995. So do you admit that your statements are conflicting or one maybe true or the other maybe correct and the other is not true.

A The other one is correct, sir.

Q So which one is correct now?

A

The July 31, sir.

....

ATTY. URBANO: [on re-cross-examination]

Madam Witness, you said in your direct that you were raped on May 1, 1995. Then when I asked you during

cross if there was an unusual incident which happened on May 1, 1995 you said there was no unusual incident. So you admit Madam Witness that one of this answer is correct and one is not correct.

ANSWER:

The correct one is that I was raped on May 1 and the truth is it was an unusual incident because I remember when he raped me, sir, and "pangkaraniwan nyang ginawa sa akin yon."

ATTY. URBANO:

Your Honor, may we make it of record that the witness refused to answer the question.

COURT:

No. What the Court observes is that when the Court is trying to make the witness answer, she was crying.

ATTY. URBANO:

So you mean to say now Madam Witness, the raping done by your father is not an unusual incident.

ATTY. QUENDANGAN:

Already answered your Honor.

COURT:

Witness may answer for clarification.

ANSWER:

Yes, sir.

ATTY. URBANO:

But you just testified Madam Witness during your re-direct that such act of your father is not usual incident. So how would you now explain your disconflicting (sic) answer.

PROS. REAS:

That is misleading question, your Honor. The manifestation of counsel earlier your Honor, the word "di pangkaraniwan" was referred to the incident which happened on a particular date. But not on the act of the father in raping the girl. That is misleading question.

ATTY. URBANO:

Your Honor, may I know to which act the counsel was referring to when he asked the witness during re-direct "di pangkaraniwang pangyayari."

ATTY. QUENDANGAN:

The "di pangkaraniwang pangyayari" was referred only to three (3) instances. The May 1, May 24 and July 9. I shoot that phrase only on those three (3) instances, your Honor.

ATTY. URBANO:

So am I correct to say your Honor that when the counsel, the Private Prosecutor was asking the witness about unusual incident, he is not referring to the rape act of the father.

ATTY. QUENDANGAN:

There are eight (8) incidents your Honor. I asked only on three (3) incidents. It does not refer to other incidents.

In reviewing the evidence in these cases, the Court has been guided by the following principles set forth in previous cases, to wit:[60]

- That an accusation for rape can be made with facility, and while the commission of the crime may not be easy to prove, it becomes even more difficult, however, for the person accused, although innocent, to disprove;
- That in view of the intrinsic nature of the crime of rape where only two persons normally are involved, the testimony of the complainant must always be scrutinized with great caution; and,
- That the evidence for the prosecution must stand or fall on its own merits and should not be allowed to draw strength from the weakness of the evidence for the defense.

Alleged Improbabilities in Complainant's Testimony

Accused-appellant argues that on April 28, 1995, when he allegedly raped his daughter for the second time, the latter did not put up any resistance or make any noise to wake up her two sisters who were sleeping beside her. In effect, he is saying there was lack of force or intimidation.

Mylene testified that the sexual assaults by accused-appellant were all attended by force and threats which rendered her resistance futile. Indeed, as this Court said in *People v. Matrimonio*,^[61] the test is whether the threat or intimidation produces a reasonable fear in the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. Where resistance would be futile, offering none at all cannot amount to consent to the sexual assault. And, in a rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter sufficiently takes the place of violence or intimidation. That ascendancy or influence flows from the father's parental authority over his children and from the latter's correlative duty to obey and observe reverence and respect towards the former.

Accused-appellant contends that he could not have raped Mylene inside her bedroom because his two other daughters were sleeping there. Complainant was asked this question and her answer was that if her sisters were in fact awakened by her struggle as her father abused her and they knew what was going on, they did not tell her:

Q Is anyone of your sisters awakened when that incident was taking place?

A

I am not aware if they were awakened or if they have seen it or they do not just want to tell me if they knew about it, sir.^[62]

Indeed, it is common judicial experience that rapists are not deterred from committing their odious act by the presence of people nearby.^[63] Lust is no respecter of places,^[64] it has been said. In these cases, the commission of the crime was effectively aided by the fact of accused-appellant's great moral ascendancy over complainant, which prevented the latter from making an outcry as she could have done were it another person who committed the sexual assaults against her.

Finally, accused-appellant contends:^[65]

It is worthy to note that even prosecution witness, Dr. Cosidon testified on her findings of the physical examination of the private complainant done two days after the alleged rape on September 11, 1995 to the effect that: 'There are no external signs of recent application of any form of trauma at the time of examination. The vaginal and peri-urethral smear are negative for gram-negative diplococci and for spermatozoa.' This fact

is very material considering the positive testimony of the accused that she was raped two days before said medico-legal examination.

The accused is well-aware of the fact that jurisprudence has ruled that the absence of spermatozoa when private complainant is examined does not negate the commission of rape. However, it is submitted that this rule applies only when there is a clear evidence to show that said act was committed. In this regard, this rule should not be applied in the case at bar as there is sufficient evidence to show that the complained act did not take place at all. Thus, the absence of spermatozoa should be seriously considered and weighed heavily in the determination of the accused's innocence.

As already stated, the evidence of the prosecution shows beyond doubt that accused-appellant raped his daughter eight (8) times. Moreover, such crime is consummated when the penis touches the pudendum, however slightly.[66] In rape cases, a broken hymen is not an essential element thereof.

Accused-appellant says that Paz Codera, who is childless, is behind the filing of the charges against him. He claims that Paz wants to take Mylene as her own. It will suffice to say that accused-appellant has presented no evidence to prove this assertion, let alone that the allegation is silly.

The Court is convinced beyond a shadow of doubt that accused-appellant committed the eight (8) counts of rape alleged in the informations against his daughter. The trial court correctly held accused-appellant guilty of each count of rape. Indeed, Mylene spoke in a simple and forthright manner. She maintained her testimony even after the trial court had warned her that her father could be meted out the death penalty if found guilty of the charges. Her testimony is corroborated by medical findings that she suffered lacerations in her hymen. Against such evidence of the prosecution, the bare denial of accused-appellant cannot prevail.[67] Denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.[68] In these cases, complainant's testimony is entitled to greater weight because it is against her own father.[69] We cannot believe she would fabricate charges against her father if the charges were not true. At one point, Mylene broke down while testifying.[70]

Lack of Sufficient Evidence As to Complainant's Age

We think, however, that the trial court erred in applying in these cases the provision of Art. 335 of the Revised Penal Code, as amended by §11 of R.A. No. 7659, that the penalty of death shall be imposed on the offender in rape cases if "the victim is under eighteen (18) years of age and the offender is a parent . . . of the victim." The concurrence of the minority of the victim and her relationship to the offender is a special qualifying circumstance which should be both alleged[71] and proved[72] with certainty in order to warrant the imposition of the death penalty. In these cases, complainant never said she was below 18 years of age when she was allegedly raped by her father on any of the dates stated in her complaints, i.e., April 15, April 28, May 1, May 24, June 20, July 9, July 31, and September 10, 1995. That she was so is merely a deduction (1) from her Salaysay, dated September 14, 1995, and her testimony in court on November 7, 1995[73] when, in stating her personal circumstances, she said she was 17 years of age, and (2) from her answer to the question how old she was, when asked by the defense counsel on November 14, 1995.[74]

On the other hand, the decision of the trial court contains no express and categorical finding that complainant was below 18 when she was raped to justify the imposition of the death penalty on accused-appellant. The trial court's references to the age of complainant on November 7, 1995 were made in connection with the motion filed by Rebecca Maglente for custody of complainant. Even then, the court's references to complainant's age are equivocal. Thus, in its order, dated November 7, 1995,[75] the court stated it was denying Rebecca's motion for custody for the additional reason that complainant was "more than 17 years of age now [i.e., November 7, 1995]."

In the course of the proceedings for custody held that day, November 7, 1995, the court said:

Although as I said, the Motion for Custody should be filed before the proper forum and that is the Courts who are designated to try cases regarding Juvenile and Domestic Relations cases. But as you said Atty. Urbano, considering that the rape cases is with this sala, the Presiding Judge could also resolve the pending motion. Now, before resolving the Motion for Custody, I would like to ask the complainant considering that she is past 17 years of age, according to her, where her last birthday is August 21, 1995, she turned 17.[76]

The statements complainant was "more than 17 years of age" and "past 17 years of age" are susceptible of varying interpretations. They could mean she was 18 years of age, in which case the death penalty could not be imposed, just as they could mean complainant was 17 years and a few days or months, in which case the imposition of the death penalty would be justified. Of course, the trial court also mentioned August 21, 1995 as complainant's last birthday. The records do not, however, show when complainant said this to be her last birthday or that she said this at all.

At all events, it is the burden of the prosecution to prove with certainty the fact that the victim was below 18 when the rapes were committed in order to justify the imposition of the death penalty. The fact that accused-appellant has not denied the allegation in the complaints that Mylene was below 18 years of age when any of the crimes was committed cannot make up for the failure of the prosecution to discharge its burden. Because of its failure to discharge this burden and the corresponding failure of the trial court to make a categorical finding as to the minority of the victim, we are constrained to hold that the qualifying circumstance of minority and relationship cannot be appreciated in these cases. It is different with regard to the relationship of the offended party and accused-appellant, because the latter admitted that complainant is his daughter. Perforce, the death penalty imposed by the trial court in each of the eight (8) cases should be reduced to reclusion perpetua as provided in the second paragraph of Art. 335 of the Revised Penal Code, as amended.

The award of damages made by the trial court should likewise be modified. Under present case law, the award of P50,000.00 for civil indemnity is mandatory upon the finding of the fact of rape.[77] Hence, accused-appellant should be ordered to pay complainant the total amount of P400,000.00. In addition, he should be ordered to pay in each case moral damages in the amount of P50,000.00. This award is to be given even if there is neither allegation nor evidence presented as basis therefor.[78] But the award of exemplary damages in the amount of P50,000.00 should be disallowed for lack of basis.[79]

WHEREFORE, the decision of the Regional Trial Court of Quezon City, Branch 78, is AFFIRMED with the following MODIFICATIONS:

- (1) In Criminal Case Nos. Q-95-63093-100, accused-appellant's sentence in each case is reduced to reclusion perpetua.
- (2) In Criminal Case Nos. Q-95-63093-100, accused-appellant is ordered to pay the offended party, Mylene Q. Maglente, the amount of P50,000.00 in each case, or the total of P400,000.00, as indemnity.
- (3) In Criminal Case Nos. Q-95-63093-100, accused-appellant is also ordered to pay P50,000.00 in each case, or the total of P400,000.00, as moral damages.
- (4) In Criminal Case Nos. Q-95-63093-100, the award of P50,000.00 as exemplary damages is deleted.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

[1] Rollo, pp. 34-43.

[2] Salaysay of Mylene Maglente dated September 14, 1995; See Exhibit C, Prosecution's folder of exhibits.

[3] Id., TSN, pp. 33-35, Nov. 7, 1995.

[4] Eight (8) counts of rape committed on the following dates: April 15, 1995 (3:00 A.M.), April 28, 1995 (1:00 A.M.), May 1, 1995 (2:00 A.M.), May 24, 1995 (1:30 A.M.), June 20, 1995 (4:00 A.M.), July 9, 1995 (2:30 A.M.), July 31, 1995 (1:40 A.M.), and September 10, 1995 (2:20 A.M.).

[5] July 9, 1995; June 20, 1995; May 24, 1995; May 1, 1995; April 28, 1995; April 15, 1995; July 31, 1995; and September 10, 1995, respectively.

[6] TSN, pp. 18-22, Nov. 7, 1995.

[7] TSN, pp. 22-23, Nov. 7, 1995; pp. 8-9, Nov. 14, 1995; and p. 4, Nov. 21, 1995.

[8] TSN, p. 25, Nov. 7, 1995.

[9] Id., pp. 25-26.

[10] Id., pp. 26-27.

[11] TSN, pp. 27-28, Nov. 7, 1995.

[12] TSN, p. 28, Nov. 7, 1995.

[13] See TSN, pp. 11, 13, Nov. 14, 1995.

[14] TSN, pp. 28-29, Nov. 7, 1995.

[15] TSN, p. 10, Nov. 21, 1995.

[16] Salaysay of Mylene Q. Maglente dated September 14, 1995, Prosecution's folder of exhibits; RTC Records, pp. 20-22; TSN, pp. 29-31, Nov. 7, 1995.

[17] Salaysay of Rebecca Maglente dated September 14, 1995; RTC Records, p. 23.

[18] Prosecution's folder of exhibits.

[19] TSN, pp. 23-24 and pp. 36-37, Nov. 7, 1995.

[20] TSN, pp. 4-5, Nov. 14, 1995.

[21] Order dated November 7, 1995; RTC Records, p. 52.

[22] RTC Order, dated Nov. 22, 1995; Records, p. 58.

[23] TSN, pp. 4-5, Dec. 14, 1995.

[24] Prosecution's folder of exhibits.

[25] TSN, p. 6, Dec. 14, 1995.

[26] *Id.*, pp. 8-9.

[27] Prosecution's folder of exhibits.

[28] TSN, pp. 7-8, Dec. 14, 1995.

[29] TSN, pp. 3-8, Jan. 24, 1996.

[30] *Id.*, pp. 8-11.

[31] TSN, pp. 5-6, Jan. 15, 1996.

[32] *Id.*, pp. 8-10.

[33] TSN, pp. 4-5, Feb. 12, 1996.

[34] *Id.*, pp. 5-7.

[35] *Id.*, pp. 8-9.

[36] *Id.*, pp. 9-10.

[37] *Id.*, pp. 10-11.

[38] *Id.*, p. 11.

[39] *Id.*, pp. 11-12.

[40] *Id.*, pp. 12-13.

[41] *Id.*, pp. 13-14, 18-23.

[42] *Id.*, pp. 36-39.

[43] TSN, pp. 3-4, Mar. 15, 1996.

[44] *Id.*, pp. 5-7.

[45] *Id.*, p. 8.

[46] *People v. Banela*, G.R. No. 124973, January 18, 1999 citing *People v. Castillo, Jr.*, 275 SCRA 753 (1997); *People v. Cogonan*, 262 SCRA 693 (1996); *People v. Cura*, 240 SCRA 234 (1995).

[47] TSN, pp. 23-24, Nov. 7, 1995.

[48] *Id.*, pp. 36-37 (Emphasis added).

[49] TSN, pp. 7-8, Nov. 14, 1995.

[50] *Id.*, pp. 10-16 (Emphasis added).

[51] [September 9, 1995 was a Saturday. -- Court.]

[52] *People v. Padilla*, G.R. No. 126124, Jan. 20, 1999, citing *People v. Atuel*, 261 SCRA 339 (1996).

[53] TSN, p. 5, Nov. 14, 1995 (Emphasis added).

[54] *People v. Calma*, G.R. No. 127126, Sept. 17, 1998, citing *People v. Aguilar*, 222 SCRA 394, 408 (1993).

[55] *Id.*, citing *People v. Salangga*, 234 SCRA 407, 417 (1994).

[56] *People v. Lagmay*, 215 SCRA 218, 226 (1992).

[57] *People v. Ocampo*, 206 SCRA 223, 232 (1992).

[58] TSN, pp. 4-7, Nov. 21, 1995 (Emphasis added).

[59] *Id.*, pp. 10-13 (Emphasis added).

[60] *People v. Solema*, G.R. No. 129397, February 8, 1999, citing *People v. Gabris*, 258 SCRA 663 (1996).

[61] 215 SCRA 613 (1992).

[62] TSN, p. 9, Nov. 14, 1995.

[63] *People v. Ramos*, G.R. No. 129439, Sept. 25, 1998.

[64] *People v. Lusa*, 288 SCRA 296, 304 (1998).

[65] Brief for Accused-Appellant, pp. 18-19.

[66] *People v. Oliver*, G.R. No. 123099, Feb. 11, 1999, citing the cases of *People v. Caballes*, 274 SCRA 83 (1997), *People v. Andan*, 269 SCRA 95 (1997); *People v. Masagana*, 259 SCRA 380 (1996).

[67] See *People v. Taneo*, 284 SCRA 251 (1998).

[68] *People v. Burce*, 269 SCRA 293 (1997).

[69] *People v. Tabugoca*, 285 SCRA 312 (1998), citing *People v. Matrimonio*, 215 SCRA 613 (1992), *People v. Villanueva*, 254 SCRA 202 (1996); *People v. Gaban*, 262 SCRA 593 (1996).

[70] TSN, p. 12, Nov. 21, 1995.

[71] *People v. Cantos*, G.R. No. 129298, April 14, 1999.

[72] See *People v. Manggasin*, G.R. Nos. 130599-600, April 21, 1999.

[73] TSN, p. 12, Nov. 7, 1995.

[74] TSN, p. 17, Nov. 14, 1995.

[75] Records, p. 51.

[76] TSN, p. 5, Nov. 7, 1995 (Emphasis added).

[77] *People v. Gementiza*, 285 SCRA 478, 492 (1998).

[78] *People v. Alba*, G.R. Nos. 131858-59, April 14, 1999; *People v. Ramos*, G.R. No. 129439, Sept. 25, 1998; *People v. Prades*, G.R. No. 127569, July 30, 1998, cited in *People v. Medina*, G.R. No. 126575, Dec. 11, 1998.

[79] *People v. Alba*, *supra.*; *People v. Mengote*, G.R. No. 130491, March 25, 1999.

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