

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO ACALA, ACCUSED-APPELLANT.

G.R. Nos. 127023-25. May 19, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

These cases are here for automatic review of the decision[1] of the Regional Trial Court, Branch 272, Marikina, Metro Manila, finding accused-appellant Reynaldo Acala guilty of three (3) counts of incestuous rape pursuant to Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, and sentencing him to death in each case in addition to ordering him to pay the victim, who is his daughter Fe Acala, the amount of P50,000.00 as moral damages, P25,000.00 as exemplary damages, and the costs of the suit.

In three (3) separate complaints[2] it was alleged -

In Criminal Case No. 96-789-MK:

That on or about the 19th day of January 1996, in the Municipality of Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the legitimate father of undersigned complainant, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one FE ACALA, against her will and consent.

Contrary to law.

In Criminal Case No. 96-862-MK:

That on or about the 12th day of January, 1996 in the Municipality of Marikina, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the legitimate father of undersigned complainant, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one Fe Acala, against her will and consent.

Contrary to law.

In Criminal Case No. 96-863-MK

That on or about the 26th day of December 1995, in the Municipality of Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the legitimate father of undersigned complainant with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one FE ACALA, against her will and consent.

Contrary to law.

Accused-appellant pleaded "not guilty" to each charge. The three (3) cases were then jointly tried, during which the prosecution presented six (6) witnesses, including the complainant, while the defense presented four (4)

witnesses, including accused-appellant. Their testimonies are summarized in the following portion of the decision of the trial court:[3]

A close scrutiny of the aforestated narration of facts and the evidence presented in these cases readily show that the victim FE ACALA was first abused by her own father, REYNALDO ACALA, when she was yet six (6) years old and such incestuous lusts of her father on her continued until the same was discovered by her mother Perla Acala, on January 19, 1996, when the last rape has just been committed. Immediately on the next following day, January 20, 1996, Fe and her mother went to report the matter to the police headquarters where she executed a sworn statement charging her father for the crime of multiple rapes. Due to natural fickleness of memory as a result of her tender age, the private complainant was not able to vividly recall and specify the events and circumstances under which the incestuous rapes had been committed by her father against her, except those rapes committed on December 26, 1995 and on January 12, and January 19, 1996.

During the first rape on the evening of December 26, 1995, a day after Christmas, on that yuletide season, Reynaldo Acala sent his wife and his other daughter to the village gate to buy something for dinner leaving his daughter Fe Acala alone with him in their house. Considering that they have to ride a tricycle to reach the village gate, he set in motion his unchaste amorous intention against his daughter when he asked the latter to lie down, took off her shorts and underwear and likewise did the same and thereafter held her two arms, kissed her neck and then inserted his organ and pumped her. This was illustratively demonstrated by the private complainant while giving her testimony in court. That after she was raped, she went downstairs at about 8:00 o'clock in the evening. On the second rape committed in the early morning of January 12, 1996, the private complainant was awakened by the voice of her sister downstairs calling for her mother. On her way down, her father suddenly appeared besides her and told her to be quiet, which she obeyed because of his threat, then started undressing her. He succeeded in abusing her again until a white substance came out of his organ. These impure lusting advances were never made known by the victim to the mother because of the father's threat to maul and kill them until the former herself discovered the same immediately just after the rape on January 19, 1996, consequently, when confronted, her daughter confirmed the abovementioned incestuous rapes committed by her husband against their daughter.

As a result of the foregoing, three (3) separate crimes of rape were filed in court and during the trial, the prosecution service presented the private complainant who testified to the effect that she was raped by her father on those particular aforesaid dates; the mother of the private complainant who assisted and corroborated the statement of the private complainant together with the family counselor and teacher of the private complainant; the police officer who conducted the investigation of the case; and the medico-legal officer who proved that the child was no longer in a virgin state.

On the part of the defense the accused blatantly denied the accusation of his daughter and wife. He alleged that he could not then be able to rape his daughter on those days mentioned by the latter as he played mahjong in the house of Nardo Mercado, also at NAWASA Compound in Provident Village from 12:00 o'clock at noontime up to 3:00 o'clock in the afternoon the following day; that on 5:00 o'clock in the morning of January 12, 1996, he was sleeping downstairs of their residence while his wife and two daughters slept upstairs and on January 19, 1996, at 10:30 in the morning, he was in a bus on the way to his sister Nelia del Rosario in Monumento. He left their residence at 9:00 o'clock and reached his sister's house at 11:00 o'clock. He pointed out that the cases filed against him was only fabricated because he is an irresponsible family man having hooked in gambling and for that reason, he mortgaged two rooms of their house to his sister-in-law Sally Ybanez without the knowledge of his wife. He further alleged that his daughter Fe may have lost her virginity as she frequently played soccer with her friends at Ateneo and she is also fond of riding bicycles. To vouch his testimonies, he presented his daughter Liezl Acala; his sister Nelia del Rosario; Perfecto Lovino, Jr., a taxi driver and also a resident of the same place; and his sister-in-law Exaltacion Ybanez.

On October 28, 1996, the trial court rendered judgment as follows:

WHEREFORE, foregoing premises considered, the court finds the accused REYNALDO ACALA guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659, for three (3) counts, as charged against him and is hereby sentenced to suffer in each of the case, the extreme penalty of DEATH.

The accused is further ordered to pay the private complainant Fe Acala the amount of FIFTY THOUSAND PESOS (P50,000.00) as moral damages and the amount of TWENTY FIVE THOUSAND (P25,000.00) PESOS as exemplary damages and the cost of the suit.

SO ORDERED.

In view of the penalty imposed, the records were elevated to this Court for automatic review pursuant to Rule 122, §10 of the Rules on Criminal Procedure.

Accused-appellant seeks the reversal of his conviction on the following grounds:[4]

I

THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THREE (3) COUNTS OF RAPE.

II

THE COURT A QUO ERRED IN ORDERING THE ACCUSED-APPELLANT TO PAY PRIVATE COMPLAINANT THE AMOUNT OF FIFTY THOUSAND PESOS (P50,000.00) AS MORAL DAMAGES AND THE AMOUNT OF TWENTY-FIVE THOUSAND PESOS (P25,000.00) AS EXEMPLARY DAMAGES AND THE COSTS OF THE SUIT.

In support of the assignment of errors, accused-appellant contends:

- (1) The victim did not state in her first sworn statement, dated January 20, 1996, that aside from the rape committed on January 19, 1996, she was also raped by her father, herein accused-appellant, on December 26, 1995 and January 12, 1996, thereby placing in doubt her credibility.
- (2) Dr. Jesusa Nieves Vergara's testimony that she found no fresh lacerations on the hymen and spermatozoa in the vagina of the victim negates the claim of the victim that she had been raped by accused-appellant on January 19, 1996.
- (3) The victim harbored a grudge against accused-appellant for having beaten her mother and for being a gambler and an irresponsible father.
- (4) There were no witnesses to the alleged rapes.
- (5) The awards of P50,000.00 for moral damages and P25,000.00 for exemplary damages made in favor of the victim have no basis because his guilt has not been proven beyond reasonable doubt.

The Court has carefully reviewed the records of this case and has found no reason to reverse the trial court's findings, except to modify its decision as to the penalty and the award of damages.

I.

First. Concerning her failure to mention in her sworn statement, dated January 20, 1996, the two (2) other incidents of rape committed on December 26, 1995 and January 12, 1996, complainant said she was confused and had forgotten the specific dates of the other rapes and only remembered them when asked by the fiscal to try to recall all the incidents of rape to be included in the charge. Complainant testified:[5]

PROSECUTOR:

Q

When you gave your statement to the police on January 20, 1996, one day after the last rape on January 19, 1996, you did not specifically mention about the rapes committed . . . on December 26, 1995 and January 12, 1996, could you please tell us why?

ATTY. LARRACAS:

There was no mention of those dates.

COURT:

Witness may answer.

A Because at that time I forgot ma'am.

PROSECUTOR:

Q Did you mention to the police about the previous rapes?

A Yes, ma'am.

Q And your mother was present at that time?

A Yes, ma'am.

Q

Now you subsequently executed a "Karagdagang Salaysay" or Supplemental Statement wherein you mentioned the rape on December 26, 1995 and January 12, 1996, Miss Witness, under what circumstances was this statement given?

A Because the first Fiscal told me to remember all the incidents of rape to be included in the case, ma'am.

....

COURT:

Any re-cross?

ATTY. LARRACAS:

Yes, your Honor.

Q Miss Witness you remember very vividly the statement of your mind which you had on January 20, 1996 when you gave your sworn statement?

PROSECUTOR:

Not proper for recross Your Honor. It was not touched during the re-direct Your Honor. We just touched on the document.

COURT:

Witness may answer the question.

A Yes, ma'am.

ATTY. LARRACAS:

Q And you have the same condition or the same state of mind when you gave your statement on February 7, 1996?

A Yes, ma'am.

Q

So that Miss Witness on January 20, 1996 since you have stated that you have a very clear state of mind, you have no reason to forget the incident which occurred on January 20, 1996?

PROSECUTOR:

We will object considering that the testimony at that point in time she was giving on January 20, 1996, she could not remember very well....

COURT:

Witness may answer the question.

A Because I was also confused, ma'am.

ATTY. LARRACAS:

Q What was the reason that you were confused when you gave your statement on January 20, 1996?

A Because I still have that fear and anxiety, ma'am.

That victims of sexual abuse usually manifest confusion and fright was confirmed by Anita Pecson, family counselor of the Center for Family Ministries, Ateneo de Manila University, who counseled Fe Acala. Ms. Pecson said:[6]

Q And under what circumstances have you come into custody of this complaining witness Fe Acala?

A She came for counseling on June 14, 1996 at ten o'clock in the morning.

Q Who was with Fe Acala at that time if any?

A At that time, she was accompanied by her mother but it was only Fe who went into counseling.

Q And as family counselor, what steps if any did you take?

A I listened to her. . . . We went to the normal counseling process.

Q When you said you went to the normal counseling process, what was the first action that was done?

A I tried to identify what was the problem of the child.

Q Miss Witness, how did they come to your office, what brought about then to your office? How were they able to locate you?

A

It was then thru referrals, Evelyn Kidlat, she is working with Ateneo also. She is involve with the Family Apostate of Provident Village and I think she was the one who knew the mother of Fe and they were concerned

about Fe because in our term "Sabi nila natutulala ang bata."

....

Q And what is the problem of the child as relayed to you?

A "Iyon nga, natutulala," because of the rape.

Q Could you now tell us the information relayed to you regarding the rape, did she not tell you where, when and how it happened?

....

WITNESS:

From the information that Fe told me, she said that her father sexually abused her on several occasions. Even as early as when she was 6 years old.

Q And what else Miss Witness?

A

And that she was coming specifically at that particular point in time in counseling because they were already started to have hearing regarding the case, there is already court hearing and according to her that is the time "natutulala siya at nagiging makakalimutin siya."

PROS. UMALI:

Q At that time Miss witness, what was your particular impression insofar as her emotional stability is concerned?

A My impression was that she was very scared initially and she is very shy initially.

Q

And as family counselor that dealt with abused children, now, could you tell the Honorable Court what could be the reason for this state of emotion which the child had been undergoing?

A It could have been the effects of sexual abuse.

Q And this is normal in abused child?

A Yes, ma'am.

....

Q Miss witness, what was the psychological effect on the child of this trauma?

A Basically now, the only thing I can say is that she has very low self esteem also.

Indeed, as this Court observed in a case, the effect of the fear and intimidation instilled in the minds of victims of incestuous rapes cannot be tested by any hard-and-fast rule so that they must be viewed in light of the victim's perception and judgment not only at the time of the commission of the crime but also at the time immediately after.[7] The fact that the victim was confused when she executed her first sworn affidavit a day after she had been abused on January 19, 1996, and, therefore, forgot the dates of commission of the other rapes should not be taken against her. It is unfair to judge the action of a child who had undergone traumatic experiences by the norms of behavior expected of mature individuals either under the same or normal circumstances.[8]

Moreover, sworn statements which are taken ex parte are often incomplete and inaccurate, because of partial suggestion or want of suggestions and inquiries, without the aid of which the witness may be unable to recall all connected circumstances.[9] As between the sworn statement and the testimony of the victim given in court, the latter is given more weight.[10] At any rate, it is noteworthy that complainant's "Karagdagang Salaysay" (Supplemental Affidavit), executed subsequently on February 7, 1996, clearly narrated the rapes committed on December 26, 1995 and January 12, 1996.[11]

Second. Accused-appellant contends that the absence of fresh lacerations and spermatozoa in the victim's vagina belies the accusation that he raped her on January 19, 1996.

This contention has no merit. The healed lacerations confirm, rather than belie, the fact that the victim had been raped not only on January 19, 1996, when the victim's mother, Perla, found the victim without panties and accused-appellant hurriedly zipping his pants, but also on other occasions, particularly on December 26, 1995 and January 12, 1996. In fact, as testified to by the victim herself, accused-appellant started sexually abusing her since she was six years old, although she could no longer recall the details of the same. The fact of repeated sexual abuse of the victim by accused-appellant was confirmed by the testimony of Dr. Jesusa Nieves Vergara, medico-legal officer of the PNP, who told the trial court:[12]

ATTY. LARRACAS:

Q And according to your findings, there are shallow healed lacerations, 3, 5, 7 and 9, will you kindly tell Madam witness what do you mean by shallow healed laceration?

A

The shallow laceration, we mean that the laceration or the tear does not exceed more than 50% or more than half of the width of the hymen. And the healed laceration we mean that the edges of the laceration were already rounded and no tissue reactions were noted like congestion or contusion and by the numbers 3, 5, 7 and 9 o'clock, those numbers merely indicate the positions of the laceration.

Q And Madam Witness, at about what time will the laceration or at about what time a laceration of the hymen usually heals?

A Under normal conditions, the laceration of the hymen will heal for a period of 7 days.

Q

So that you will agree with me Madam witness that if the specimen was raped, was allegedly raped on the 19th of January, you will not expect that the laceration of the hymen are already been healed at the time you examined her on that day?

A

If she was not virgin, when she was sexually molested, then I will not expect to find fresh laceration.

ATTY. LARRACAS:

Q And in this case Madam witness, there are no fresh laceration?

WITNESS:

A None, ma'am.

Q

So, if in a case she is already a non-virgin at that time, you examined her, what will you expect on the laceration. If in case she was allegedly raped on the 19th and you will examine her on the 20th or in the next day?

A Then I will find healed laceration.

As the victim was no longer a virgin when she was raped on January 19, 1996, no new injury on her hymen could be expected. The fact that the lacerations were already healed points to the conclusion that the victim was repeatedly raped before January 19, 1996, consistent with the accusation against accused-appellant. In *People v. Espinoza*,^[13] it was held that healed lacerations do not negate rape. In fact, lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.^[14]

The absence of spermatozoa, likewise, does not disprove rape.^[15] According to Dr. Vergara, the absence of spermatozoa in the vaginal canal of the victim may be caused by the vertical drainage of the semen from the vagina, or the acidity of the vagina, or the washing of the vagina immediately after the sexual intercourse.^[16]

Moreover, it is also possible that accused-appellant was not able to ejaculate inside the vagina of the victim during the rape committed on January 19, 1996 considering that he stopped abusing his daughter when he heard his wife coming. Indeed, the presence or absence of spermatozoa is immaterial since it is not ejaculation but penetration which constitutes the crime of rape.

Third. Accused-appellant claims that complainant hates him because "he hurts and mauls her mother" and he is "a gambler" and that his family would in fact be "delighted if he will no longer be with them." He also argues that the fact that no one witnessed the rapes makes the allegations of the victim suspect.

The victim's credibility is neither diminished nor tainted by such imputation of ill motives. The victim was just reacting normally when asked what kind of a husband and father accused-appellant was. Her testimony on the commission of the rapes is spontaneous, convincing, and highly credible, unshaken by the intense cross-examination by the defense. It is highly unthinkable for the victim to falsely accuse her father solely by reason of ill motives or grudge. As the Court observed in *People v. Melivo*,^[17] even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to concoct a story which would put her own father for most of his remaining life in jail, if not put him to his death, and drag herself and the rest of her family to a lifetime of shame.

The fact that none of the rape incidents was witnessed by anyone does not make the complainant's testimony incredible. By its very nature the crime of rape is committed usually with only the victim and accused present. In these cases, the rapes were committed by accused-appellant inside a room on the second storey of their house when the victim's mother and sister were either out of the house or doing something downstairs. It is settled that in rape cases, the lone testimony of the victim, if credible, is sufficient to sustain a conviction.^[18]

It is noteworthy that in this appeal, accused-appellant does not insist on his alibi and denial for they are inherently weak defenses. Alibi is a defense easily fabricated. Moreover, accused-appellant failed to establish it by showing that it was physically impossible for him to have been at the scene of the crime at the time of its commission. He failed to show the impossibility of his being in their house at the time of the commission of the rapes considering that the house of Nardo Mercado, where accused-appellant alleged he was in the evening of December 26, 1995, is only 30 meters from their house; that he was allegedly sleeping in their house in the morning of January 12, 1996; and that in the morning of January 19, 1996, he was on board a bus going to Monumento to visit his sister when, according to complainant and her mother, he left the house on the pretext that he was going to look for a job after, not before, the commission of the rape.

On the other hand, his denial was unsubstantiated by any credible evidence. Denial is a negative, self-serving evidence which cannot be given greater evidentiary weight over the testimony of credible witnesses who testify on affirmative matters. Between the positive declarations of the prosecution witnesses and the negative statements of the accused, the former deserves more credence.^[19]

II.

Indeed, accused-appellant's conviction is based on the clear, candid, straightforward, and categorical testimony of the complainant. With regard to her claim that she was raped by accused-appellant on December 26, 1995, she testified:^[20]

PROS. UMALI:

Q Ms. Witness, why are you pointing to Reynaldo Acala and charging him now?

A Because he raped me.

Q And when you said he raped you or "pinagsamantalahan," could you please explain this with particularity?

A "Ginahasa po niya ako."

Q When were you raped by Reynaldo Acala?

A December 26, 1995.

Q At about what time was that Ms. Witness?

A 8:30.

Q And where were you at that time?

A In our house, ma'am.

Q And where was your house located at that time?

A Provident, ma'am.

Q And when you said you were raped, at about 8:30 in the evening in your residence at Provident, were you alone or you have companions at that time that you were raped?

A I was alone, ma'am.

Q Where was your mother?

A Because my father told her to buy "ulam."

Q And your "Ulam" or viand is for what meal?

A For our dinner, ma'am.

Q And do you know the place where your mother was instructed by your father to buy "ulam" or viand?

A At the gate, ma'am.

Q And could you tell the court the relative distance of that gate from your house?

A It was far because we still have to ride a tricycle.

Q You said that you were alone because your mother was not there, what about your sisters?

A They were with her.

Q You said that you were raped at that time and how were you raped, could you please explain to the court?

A He took off my shorts and my panty.

Q How was the shorts and panty removed?

A He asked me to lie down.

Q And then what happened next?

A He took off his shorts and he was only wearing brief.

Q Let us clarify, when did he took off his shorts. Was it after your shorts and panty were removed or before?

A

After he undressed me.

Q And was that the first time that he told you to lie down and remove your panty and shorts?

A No, ma'am. When I was still six (6) years old.

....

Q

You said that you were raped or "ginahasa," could you please be more particular in this case, how were you raped, aside from the fact that your panty and shorts were removed?

A He held my hands and kissed me.

Q Which hand was being held by your father at that time?

A My two hands, ma'am.

Q How was it held, could you please demonstrate?

A (The witness raised her two arms backward)

Q And when you said that your hands were held like this as demonstrated by you, how was it being held now?

A

(The witness is grabbing the wrist of her hand)

Q Both wrists?

A Yes, ma'am.

Q And with what hands did he hold your two wrists?

A Two hands, ma'am.

Q You mean to say one is to one hand?

A Yes, ma'am.

Q When you were thus held and said that you were being kissed, where did he kiss you when your hands were being held by his hands?

A On my neck, ma'am.

Q Which side of the neck, right or left?

A Left and right side.

Q While he was kissing you, what was happening, if any?

A He started raping me.

Q And when you said he started raping you, could you please explain what is meant by raping you or "ginahasa ka?"

A He inserted his organ and held me by the hands and kissed me around my neck.

Q After he inserted his penis, did he do anything?

A He started pumping me. (Witness demonstrating how it was done by raising her hand in an up and down motion)

Q While he was pumping, what did you do, if any?

A Sometimes I cry because it was painful.

Q At that very moment when you were being raped on December 26, 1995, how have you felt aside from the physical pain?

A My body is aching, ma'am.

....

Q Aside from the physical pain, how have you felt, how did you take the situation?

A I felt molested and humiliated.

Q

Was this the first time that you felt this way?

A No, ma'am. Everytime he rapes me, that was my feelings.

PROS. UMALI:

May we make it on record that the witness is crying and had in fact wiped the tears which she shed.

....

Q Did you report this to your mother, the incident of December 26, 1995?

A

No, ma'am.

Q The incident on January 19?

A I did not report the December 26, 1995 but only the January 19, 1996.

Q Why did you not report the matter, the December 26, 1995 rape?

A Because I was afraid.

Q Why were you afraid?

A Because he was threatening.

Q How was he threatening you?

A

That he would maul us and kill us.

....

With regard to the rape committed on January 12, 1996, complainant said:[21]

Q On January 12, 1996, do you recall where you were after midnight or early morning?

A

Yes, ma'am.

Q Where were you?

A I was at home.

Q What were you doing?

A We were still sleeping.

Q Was your mother sleeping with you that time?

A She was there but I heard my sister called her because she went downstairs to the comfort room to defecate.

Q You said that your sister and mother went downstairs because your sister was about to defecate downstairs. Now what happened, if any, when you were left sleeping?

A He also raped me.

Q Who raped you?

A My father, ma'am.

Q And you said you were raped, how were you raped that time?

A He did the same thing.

Q When you said he did the same thing, let us go one by one, how did he start raping you?

A He told me not to be noisy then he removed my panty and my shorts.

Q When he was doing that thing to you, what did you do, if any?

A I did not make any noise because he was threatening me.

Q You said that you kept silent considering that he was threatening you, how was he threatening you?

A He told me not to be noisy or else he would maul us and kill us.

Q After saying that to you, what happened next, if any?

A He laid on top of me and he inserted his penis.

Q After inserting his penis, what did he do next, if any?

A

He was doing like this (witness demonstrating an up and down motion with her right hand)

Q While he was making that up and down motion or in a pumping motion, how were you positioned?

A I was lying down (the witness demonstrated her two arms held up and gripped)

Q Why were you in this gripping position?

A Because he was holding my hands.

Q What about your legs, what is the relative position of your legs?

A Before he inserted his penis, he spread out my legs, "pinabukaka po niya ako."

Q While he was thus pumping or making that up and down motion after the insertion of his penis into your vagina, what happened next after that?

A No more because there was a white substance that came out.

Q Came out from where?

A From his penis.

Q Was this the very first time that you saw that white substance that came out from his penis?

A Many time, each time he rapes me.

Q And you said that white substance was released from his penis, after that now to your recollection, what had happened next, if any?

A He wiped his penis, ma'am.

Q What about you, what did you do, if any?

A I wiped my vagina.

....

Q Where was your mother when your father was wiping his penis and you yourself was wiping your own sex organ?

A She was still downstairs.

Q How long a time did your mother came upstairs?

A Around fifteen (15) minutes.

Q You mean 15 minutes after you wiped your vagina?

A Before she went up, it took her 15 minutes?

Q Did you report this January 12 incident to your mother?

A No, ma'am.

Q Why?

A Because he was threatening me.

Q And when you said he was threatening you, how were you threatened?

A Just like before, that he would kill us.

Lastly, she described how accused-appellant again raped her on January 19, 1996 as follows:[22]

Q And on January 19, 1996 at about 10:30 in the morning, do you recall where you were?

A Yes, ma'am, I was at home.

Q And what were you doing at that time, date and place?

A I have just finished taking a bath.

Q And why did you take a bath?

A Because I was going to school then.

Q What was the time of your school?

A 11:00 ma'am.

Q Have you changed your clothes to school at that time?

A Yes, I have changed my clothes.

Q At that point in time, could you please tell the court whether or not you were about to leave the house or you were still fixing yourself?

A I was still fixing myself.

Q While you were thus fixing yourself, do you recall any unusual incident that happened?

A Yes, I was also raped by my father.

Q Did you have any companion at that time aside from your father?

A Yes, ma'am. My sister was downstairs and my mother was washing clothes downstairs.

Q How old is your sister?

A Thirteen (13), ma'am.

Q And you said that you were likewise raped by your father on that particular date on January 19, 1996. Could you please tell the court this time how your father raped you?

A He told me to go to the room and I said I don't want.

Q When you said you did not want to go inside the room, what did he do, if any?

A He pulled me.

Q How were you pulled?

A He held my hands.

Q And then?

A

And he dragged me.

Q What was your relative distance from the door of that room when you said you were pulled and dragged to the room?

A They were very close.

Q After he pulled you, what happened next, if any?

A We entered the room.

Q After entering the room, was there anything else that happened, if any?

A He laid me down on the folding bed.

Q What transpired next, if any?

A He took off my panty because I had not worn my shorts yet.

Q Do you usually wear shorts in going to school?

A Yes, ma'am.

Q How did he remove your panty?

A He forcibly took off my panty.

Q What did you do when he forcibly took off your panty?

A Because he always threaten me so I did not say anything.

Q And after forcibly taking off your panty what happened next, if any?

A He was wearing pants then so he just opened the zipper and put out his penis outside.

Q And after putting his penis outside, what did he do next, if any?

A

He inserted his penis into my vagina.

Q What was your relative position when he inserted his penis into your vagina?

A (Witness is demonstrating holding her two hands upward and backward)

Q You mean to say you were lying down that time?

A Yes, ma'am.

Q And when you demonstrated your hands upward why were your hands clenched?

A Because he inserted his penis and when he started pumping, he held my two hands.

....

Q What have you felt at that moment that he was raping you or making that pumping motion?

A

It was painful.

Q What was painful?

A My vagina.

....

Q While he was pumping, what happened, if any?

A My mother called me.

Q And where was your mother at that time?

A She was downstairs because she was about to hang the clothes and she called me.

Q How were you called by your mother?

A She said, "Fe, kakain ka na."

Q And did you answer the call of your mother?

A I was not able to answer because my father was still raping me.

Q Did your father hear the call of your mother, if you know?

A Yes, he heard and he immediately stood up.

PROS. UMALI:

May we make it on record that the witness is crying heavily.

You said that your father upon hearing the voice of your mother immediately stood up, what did he do after standing up?

WITNESS:

Because my mother simultaneously appeared upstairs and saw me sitting on the following bed without panty.

Q How were you particularly positioned that your mother saw you without panty?

A (The witness demonstrating her two legs with sole stepping on the chair and stating that she was in that position because she was surprised)

Q And while in that very position wherein you said your mother saw you without panty, was it visible that your mother was able to see you without panty?

A Yes, ma'am.

Q What was the condition of your skirt then?

A It was raised up.

Q Was there any reaction coming from your mother at that time that she saw you without panty with your skirt raised up?

A She was surprised and asked my father, "why, what happened?" "Ano'ng nangyari?"

Q Did your father answer?

A He said he was just fixing his pants.

Q Did you look at your father when he uttered that he was merely fixing his pants?

A Yes, ma'am.

Q And what have you seen your father was doing with his pants at that time?

A He was trying to zip his pants.

Q When your father answered that he was merely fixing his pants, what happened next, if any?

A I wore my panty and went down to eat because I was about to go to school.

Q What about your father, what did he do after that?

A He was still upstairs.

Q How about your mother, where was she?

A She went down and asked me.

Q At that point in time when your mother asked you, what did you tell her, if any?

A She asked what did my father do to me.

Q And what was your answer?

A I said he raped me.

Q And did your mother believe you at that time?

A I went to school and she told me that she would just ask me later upon return from school.

Q Were you able to return back home that day?

A

I was able to return home.

Q At about what time was that?

A 5:00, ma'am.

Q

Did you tell this particular incident of January 19, 1996 to anybody apart from your mother?

A Only to my mother.

Q And upon your return, did your mother talk to you?

A She talked to me.

Q And where did you talk?

A At home because she asked me what happened.

Q And what did you tell her?

A I told her everything that happened.

Q And when you said you told her everything that happened, would this include the first rape when you were 6 years old?

A Yes, ma'am.

Q Does this also include the rapes committed on January 12, 1996 and December 26, 1995?

A Yes, ma'am.

Q At that time that you confessed these incidents to your mother, what was the reaction of your mother, if any?

A She told me, "Alam mo, nasasaktan ako. Huwag kang matakot, pupunta tayo sa pulis."

Q

And were you able to go to the police?

A The following day, we went to the police.

Complainant's claim that she was raped on January 19, 1996 by accused-appellant was corroborated by her mother, Perla Acala, who said she saw her daughter without panties as accused-appellant was zipping his pants:[23]

Q You said that you went up after washing your clothes, do you recall of any unusual incident that happened after coming up?

A I looked for my child, ma'am.

Q

Then?

A Because on that time, she was supposed to go to school, ma'am.

Q What happened when you were looking for your child?

A I did not see Fe and I called her, ma'am.

Q Was there any answer from Fe when you called her?

A None, ma'am.

Q What did you do when there was no response from Fe?

A I looked for her in the room, ma'am. In a vacant room.

Q Where is this vacant room located?

A At the second floor, ma'am.

Q Were you able to locate her?

A Yes, ma'am.

Q You said you were able to locate her in the vacant room, what happened after you have found her there if any?

A I saw her lying down without panty, ma'am.

Q Did she have any companion at that time?

A My husband was about to go out zipping his pants, ma'am.

Q

What action have you taken as a mother, if any?

A I just called my daughter but I pretended not to notice it because from that instance that I saw my daughter without panty, I already knew what was happening, ma'am.

....

Q What happened next if any after that?

A I allowed Fe to go to school, ma'am.

Q By the way, why did you not pay attention to your husband at that time?

A Because I thought he would escape because he would be leaving at that time, ma'am.

Q What about if he left?

A

He left that day but he returned in the afternoon after my children left, ma'am.

Q You said you held your control that he might escape, did you make any action on that day?

A After my daughter arrived from the school at around 5 or 6 o'clock in the afternoon, I asked my daughter what really happened between them, ma'am.

Q

What was the answer of your daughter?

A She said that she was fucked by her father, ma'am.

Q

What was the answer of your daughter if any?

A She said, he had been doing it for a long time, and I asked her why did you not tell it to me, and she said she was afraid, ma'am.

That accused-appellant succeeded in having carnal knowledge of his own daughter by force and intimidation is evident from the fact that according to Anita Pecson, who gave some counseling to complainant, and complainant's teacher, Lourdes Cruz, complainant was withdrawn and looked scared. In rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter take 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 of reverence and respect towards the former.[24] In the same vein, it was observed in *People v. Melivo*,[25] that, in incestuous rapes, "[t]he rapist perverts whatever moral ascendancy and influence he has over his victim in order to intimidate and force the latter to submit to repeated acts of rape over a period of time."

III.

We think, however, that the trial court erred in applying in these cases that provision of Art. 335 of the Revised Penal Code, as amended by §11 of R.A. No. 7659 which states that the death penalty 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." Summarizing the recent rulings, we held in *People v. Maglente*,[26] that, under this provision, the concurrence of the minority of the victim and her relationship to the offender is a special qualifying circumstance which must be both alleged and proved with certainty, otherwise, the death penalty cannot be imposed. In these cases, although accused-appellant admits that Fe Acala is his daughter and the evidence shows that the latter was born on August 5, 1981[27] and, therefore, she was below 18 years of age on the dates of the commission of the rapes, her age was not alleged in any of the complaints. Consequently, the special qualifying circumstance of minority and relationship cannot be appreciated and the death penalty imposed on accused-appellant. In accordance with the second paragraph of Art. 335, accused-appellant should be sentenced to reclusion perpetua for each count of rape.

The trial court awarded the victim the sum of P50,000.00 as moral damages, and P25,000.00 as exemplary damages for all three (3) counts of rape. In accordance with current rulings, moral damages in the amount of P50,000.00 should be awarded for each count of rape. In addition, the victim should be given indemnity in an amount not less than P50,000.00 for each count of rape. This is separate and distinct from the award of moral damages which is automatically granted in rape cases.[28] On the other hand, the award of exemplary damages in the amount of P25,000.00 should be deleted for lack of legal basis.[29]

WHEREFORE, the decision of the Regional Trial Court, Branch 272, Marikina, Metro Manila, is hereby AFFIRMED with the following MODIFICATIONS:

- (1) In Criminal Case Nos. 96-789-MK, 96-862-MK, and 96-863-MK, accused-appellant's sentence is reduced to reclusion perpetua;
- (2) In Criminal Case Nos. 96-789-MK, 96-862-MK, and 96-863-MK, accused-appellant is ordered to pay the offended party, Fe Acala, the amount of P50,000.00 in each case, or the total amount of P150,000.00 as indemnity;
- (3) In Criminal Case Nos. 96-789-MK, 96-862-MK, and 96-863-MK, accused-appellant is further ordered to pay the offended party, Fe Acala, the amount of P50,000.00 in each case, or the total amount of P150,000.00 as moral damages;
- (4) In Criminal Case Nos. 96-789-MK, 96-862-MK, and 96-863-MK, the award of P25,000.00 as exemplary damages is deleted.

SO ORDERED.

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

[1] Per Judge Reuben P. Dela Cruz.

[2] Records, pp. 12-14.

[3] RTC Decision, pp. 27-30; Rollo, pp. 40-43.

[4] Brief for Accused-appellant, p. 1; Rollo, p. 63.

[5] TSN, pp. 7-11, July 9, 1996.

[6] TSN, pp. 8-11, July 17, 1996.

[7] *People v. de los Santos*, G.R. No. 121906, September 17, 1998.

[8] *People v. Bartolome*, G.R. No. 129054, September 29, 1998.

[9] *People v. Castillo*, 261 SCRA 493 (1996).

[10] *People v. Conde*, 252 SCRA 681 (1996).

[11] Records, p. 3.

[12] TSN, pp. 7-8, August 27, 1996.

[13] 247 SCRA 66 (1995).

[14] *People v. Obejas*, 229 SCRA 549 (1994).

[15] *People v. Salomon*, 229 SCRA 403 (1994); *People v. Abiera*, 222 SCRA 378 (1993); *People v. Magallanes*, 218 SCRA 109 (1993).

[16] TSN, pp. 11-12, August 27, 1996.

[17] 253 SCRA 347 (1996).

[18] *People v. Quitariano*, 266 SCRA 373 (1997).

[19] *People v. Guibao*, 217 SCRA 64 (1993); *People v. Song*, 204 SCRA 135 (1991); *People v. Marti*, 193 SCRA 57 (1991).

[20] TSN, pp. 8-10; 19-25, July 3, 1996.

[21] TSN, pp. 25-29, July 3, 1996.

[22] TSN, pp. 29-39, July 3, 1996.

[23] TSN, pp. 26-30, July 9, 1996.

[24] *People v. Maglente*, G.R. Nos. 124559-66, April 30, 1999.

[25] 253 SCRA 347, 356-357 (1996).

[26] G.R. No. 124559-66, April 30, 1999, citing *People v. Cantos*, G.R. No. 129298, April 14, 1999; *People v. Manggasin*, G.R. No. 130599-600, April 21, 1999.

[27] TSN, p. 6, July 3, 1996.

[28] *People v. Gementiza*, G.R. No. 123151, January 29, 1998; *People v. Victor*, G.R. No. 127903, July 9, 1998.

[29] *People v. Alba*, G.R. Nos. 131858-59, April 14, 1999; *People v. Mengote*, G.R. No. 130491, March 25, 1999.

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