

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SIMEON B. CRUZ A.K.A. “BAROK”, ACCUSED-APPELLANT.

G.R. Nos. 128346-48. August 14, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us on automatic review is the Decision[1] of the Regional Trial Court of Cabanatuan City, Branch 25, in Criminal Cases Nos. 6970-AF to 6972-AF, convicting the appellant, Simeon B. Cruz, of three (3) counts of rape and sentencing him to suffer the supreme penalty of death in each case.

The appellant, Simeon B. Cruz, stands charged with three (3) counts of rape, defined and penalized under Article 335 of the Revised Penal Code, as amended, in three (3) criminal complaints, filed and signed by the private complainant, Vanessa S. Cruz, assisted by her legal guardian, Felicidad Santiago, and subscribed and sworn to on June 5, 1996 before Prosecutor II Rodolfo P. Beltran of the Office of the Provincial Prosecutor of Nueva Ecija. The said criminal complaints read as follows:

Criminal Case No. 6970-AF:

That on or about one evening in the month of November, 1994 at Barangay Poblacion, Municipality of Gen. Natividad, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs by means of force, violence and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will, to her damage and prejudice.

The herein accused committed the crime with the aggravating circumstance of relationship, the accused being the father of herein complainant.

CONTRARY TO LAW.

Criminal Case No. 6971-AF:

That on or about one evening in the month of August, 1994 at Barangay Poblacion, Municipality of Gen. Natividad, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs by means of force, violence and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will, to her damage and prejudice.

The herein accused committed the crime with the aggravating circumstance of relationship, the accused being the father of herein complainant.

CONTRARY TO LAW.

Criminal Case No. 6972-AF:

That on or about one evening in the month of November, 1994 at Barangay Poblacion, Municipality of Gen.

Natividad, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs by means of force, violence and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will, to her damage and prejudice.

The herein accused committed the crime with the aggravating circumstance of relationship, the accused being the father of herein complainant.

CONTRARY TO LAW.

Upon being arraigned on June 24, 1996, appellant Simeon B. Cruz, assisted by counsel de oficio, entered the plea of "Not guilty" in each of these cases. Thereafter, joint trial on the merits ensued.

The evidence of the prosecution shows that one Wednesday evening, in the third week of August, 1994, the appellant, Simeon Cruz, arrived home in Barangay Poblacion, Gen. Natividad, Nueva Ecija heavily drunk. The private complainant, Vanessa S. Cruz, who was then sleeping on the second floor of the house with her younger sister, Lorraine, woke up and went downstairs when called by her father from the master's bedroom which was located on the groundfloor. Simeon ordered Vanessa to enter the room but the latter refused thus, he pulled her and locked the door.[2]

Simeon poked a knife on the lower right ear of his daughter and ordered her to undress. After having undressed, Simeon, who was already naked from waist down, removed Vanessa's underwear and proceeded to kiss her breast and other private parts. Vanessa pleaded for him to stop inasmuch as she was his daughter, but in vain. Simeon continued kissing her body and placed himself on top of her. Vanessa cried in pain when her father inserted his penis into her vagina and made push and pull motions.[3]

Vanessa was raped by her father again in the second week of November 1994. Simeon called his children namely: Vanessa, Lorraine and Mark Ian from the master's bedroom at past 12:00 o'clock midnight. After the three (3) had entered the room, Simeon instructed Lorraine and Mark Ian to step out and leave Vanessa alone with him. Simeon locked the door and removed his clothes before undressing his daughter. Vanessa cried and asked her father why he was doing such thing when she was her daughter, but Simeon did not respond. Instead, he laid Vanessa in bed and kissed her. Then he instructed her to stand, hold his penis and place the same into her mouth. He also instructed his daughter to masturbate his penis. Subsequently, he laid her again in bed and kissed her private parts before finally entering her. Thereafter, Simeon threatened Vanessa with death, including her maternal grandmother, if she would report the incident.[4]

The last incident of rape happened in the third week of November, 1994 after Simeon arrived home late in the evening heavily drunk. He took Vanessa from upstairs, where she was sleeping together with her brothers and sister, and brought her into the master's bedroom at the ground floor. Simeon removed her bra, then her pair of shorts and panty. He then kissed her private parts even though she was crying. Vanessa told him to stop but Simeon proceeded to remove his clothes and continued kissing her breast. Thereafter, he went on top of her and inserted his penis into her vagina causing her intense pain.[5]

Vanessa disclosed that her mother, Marlyn S. Cruz, went to Hong Kong on November 12, 1991 to work as a domestic helper. Since then, Vanessa and her siblings namely: Michael (14), Lorraine (9) and Mark Ian (4) had been living with their father in Barangay Poblacion, Gen. Natividad, Nueva Ecija. Her maternal grandmother, Felicidad Santiago, also moved in their house to keep them company.[6] However, her grandmother was not always in the house inasmuch as the latter would be away twice a week or, at times for three (3) straight days in a week, to stay in her house in Mataas na Kahoy, Gen. Natividad, Nueva Ecija, which is about three (3) kilometers away from their house.[7]

On March 26, 1996, Simeon arrived home at around 4:00 o'clock in the afternoon heavily drunk. He dragged Vanessa, who was then watching the television together with her grandmother at the sala, into the master's bedroom. Simeon locked the door, and this time even placed a nail to secure it. He covered the windows before he began kissing his daughter. Vanessa protested and told her father to better kill her. Infuriated, Simeon hit her in the stomach and bumped her head four (4) times against the wall. Apparently not contented, Simeon got hold of a hammer and swung it against her daughter hitting her in the jaw.[8]

Aware of what was happening, Felicidad hurried to the house where Simeon had come from drinking, to request Julian Ibarra to intercede and pacify his kumpadre. Had it not been for the timely arrival of Julian, Simeon would have again succeeded in molesting his daughter.[9]

On the same day, Vanessa and her siblings were brought by Felicidad to her house in Mataas na Kahoy, Gen. Natividad, Nueva Ecija. For the first time, Vanessa revealed to her grandmother the bestial acts committed by her father against her.

On March 28, 1996, Vanessa was accompanied by her grandmother to the NBI office in Cabanatuan City to lodge a complaint for rape against her father. After taking her sworn statement on April 30, 1996, the NBI authorities in Cabanatuan City arrested the appellant on May 1, 1996.[10]

The physical examination conducted by Dra. Lucila Gatchalian, M.D. on Vanessa at the Dr. Paulino J. Garcia Memorial Research and Medical Center in Cabanatuan City on April 30, 1996, shows the following findings:

NOI -- alleged rape

POI -- in their own house, Pob., Gen. Nat., N. E.

DOI --since she is (sic) years old, 'till March 27, 1996

TOI -- anytime

Patient came accompanied by her maternal grandmother.

General Survey: conscious, coherent, ambulatory with the following vital signs:

BP -- 100/70; Temp. -- 36 c; PR --75/min.; RR -- 20/min.

LMP -- April 25, 1996 menarche 13 years old.

HEENT -- pinkish palpebral conjunctive.

Breast -- well-developed pinkish areola, no nipple discharge.

Abdomen -- flat, soft, no mass palpable.

Pelvic examination -- scanty pubic hair, well coaptated labia minora, whitish mucoid discharge was noted in the introitus.

Hymen -- old lacerations at 5 o'clock, 8 o'clock and 11 o'clock positions.

IE -- admits 1 finger with slight difficulty.

Lab. Result -- no spermatozoa seen.[11]

Dra. Lucila Gatchalian identified her signature appearing on the lower right portion of the medical certificate and affirmed the medical findings contained therein. Dra. Gatchalian recalled that Vanessa was crying and afraid when she came to the hospital on April 30, 1996 for physical examination. The three (3) healed hymenal lacerations sustained by Vanessa which are respectively indicated in the medical certificate as 5 o'clock, 8 o'clock and 11 o'clock may have been caused by the penetration of any hard object which could be an erect penis.[12] Internal examination reveals that the introitus or vaginal opening of the patient admitted one (1) finger with slight difficulty.[13]

Appellant Simeon B. Cruz vehemently denied in court any liability for the crimes charged in the three (3) informations. Simeon claimed that his mother-in-law was behind the filing of the instant charges by his own

daughter against him allegedly due to a long standing quarrel over money. Simeon disclosed that he worked in Taiwan as a factory worker from June 30, 1995 to November 15, 1995. During the said period, he sent money to his mother-in-law through the BPI Family Bank, Cabanatuan City branch, in the total amount of P10,000.00 to redeem their mortgaged property for the same amount. In addition, his mother-in-law received from him the amount of P15,000.00 which he sent her through his brother, Claudio Cruz, who returned to the Philippines from Taiwan on October 20, 1995. Upon his arrival to the Philippines in November 1995, Simeon learned that their property remained mortgaged. He confronted his mother-in-law that led to an altercation. In the process he hurled a glass hitting her in the right arm. Since then, the two seldom talked.[14]

On March 26, 1996, Simeon attended the birthday party of his kumpadre, Juanito Torres, at the latter's house at 1:00 o'clock in the afternoon. At around 4:00 o'clock in the afternoon, his youngest son arrived at the house of Juanito Torres to inform Simeon that they were going to Mataas na Kahoy with their grandmother. Simeon excused himself and went home with his son to see them go. After his mother-in-law and the kids, namely: Vanessa, Lorraine and Mark Ian had left, Simeon and Julian Ibarra, who earlier came to fetch him, went back to the birthday party. Simeon stayed at the party until 2:00 o'clock in the following morning.[15]

On March 28, 1996, Simeon went to Mataas na Kahoy, Gen. Natividad, Nueva Ecija to fetch his children from the house of his mother-in-law. Having been informed that they had gone to Cabanatuan City, he requested his sister, Maria Garcia, to go to the house of his brother-in-law, Orlando Santiago, in Cabanatuan City to inquire about his children. At the house of Orlando Santiago, Maria was informed that her nephew and nieces had transferred together with their grandmother to an ex-policeman relative, a certain Rene Bernado, who lived also in the city.[16]

On May 1, 1996 at around 6:00 o'clock in the morning, Simeon was arrested in his house by NBI agents and was brought to the NBI stockade in Cabanatuan City. Simeon was allegedly mauled by the arresting NBI agents when he refused to admit having raped his daughter, Vanessa. He presented a medical certificate to show that he suffered contusions on his body.[17]

Three (3) days after his arrest, the inquest fiscal of Cabanatuan City ordered the release of Simeon and required him to file his counter-affidavits. From Cabanatuan City, Simeon proceeded to the house of his sister, Maria Garcia, in Angeles City, Pampanga for fear of his life. While thereat, he was able to talk to his wife, Marlyn Cruz, through an overseas call to Hong Kong. He requested Marlyn to come home and help him solve their domestic problems. However, Marlyn's live-in partner in Hong Kong allegedly would not allow her.[18]

Simeon disclosed that he knew his wife had a live-in partner in Hong Kong. Marlyn allegedly informed him of her extra-marital affair when the latter went home to the Philippines on November 30, 1995 and explained that she did it to retain her employment in Hong Kong for the sake of their children. Simeon initially protested but later on agreed after Marlyn promised to come home for good when she had enough savings.[19]

Simeon was again arrested by NBI agents on June 6, 1996 at the Gapan-Olongapo highway while he was on his way to file additional counter-affidavit with the fiscal in Cabanatuan City in connection with these cases.[20]

Meanwhile, on December 25, 1996, Simeon's mother-in-law, Felicidad Santiago, together with his youngest son, Mark Ian, visited Simeon at the provincial jail of Nueva Ecija. Felicidad allegedly told Simeon that the rape cases filed in court against him may be settled amicably provided he paid P100,000.00. Simeon refused for the reason that he did not commit the charges in these cases.[21]

Claudio Cruz corroborated Simeon's testimony that the latter sent P10,000.00 to his mother-in-law, Felicidad Santiago, from Taiwan. Claudio testified that he was working in Taiwan at the time his brother, Simeon, went

there to work in the factory. Upon his return to the Philippines in October 1995, Claudio proceeded to the house of Simeon in Barangay Poblacion, Gen. Natividad, Nueva Ecija and gave to Felicidad Santiago the amount of P10,000.00 per instruction of his brother who remained in Taiwan.[22]

Another defense witness, Fernando Marcelo, BPI Family Bank, Cabanatuan City branch employee identified in court the pertinent records[23] of the bank which show that Felicidad Santiago withdrew from the Account No. S.A. 5233060005 of Simeon Cruz, with the same bank in Cabanatuan City, the total amount of P11,299.00 on September 7, 1995, and twice on October 9, 1995.

Additionally, Julian Ibarra testified that Simeon was one of the guests in the birthday party of Juanito Torres on March 26, 1996. Julian and Simeon drank liquor with the other guests in the house of Juanito Torres in Barangay Poblacion, Gen. Natividad, Nueva Ecija. At 4:00 o'clock in the afternoon, Simeon went home upon being fetched by his youngest son but promised to return. After thirty (30) minutes, Julian followed Simeon in his house, which was about three hundred (300) meters away, where he saw Felicidad Santiago at the doorway. Julian did not notice the appearance of Vanessa who was sitting with Lorraine inside the sala. He merely called for Simeon from the outside and the two of them returned to the birthday party.[24]

On rebuttal, Felicidad Santiago testified that she brought Mark Ian to the provincial jail of Nueva Ecija on December 25, 1996 upon the request of his father. Felicidad denied having influenced Vanessa to file any complaint against her father nor proposed to Simeon the settlement of the instant criminal cases for a consideration. She admitted having received from Simeon the total amount of P8,000.00 which the latter sent from Taiwan in 1995 for his children. However, she denied having received any instruction from him to apply the said amount to redeem their property.[25]

Thereafter, the trial court rendered a decision the dispositive portion of which is quoted hereunder, to wit:

PREMISES CONSIDERED, and finding the accused Simeon B. Cruz guilty beyond reasonable doubt of rape in each of the three (3) cases, is hereby sentenced to suffer the penalty of:

- DEATH in Criminal Case No. 6970-AF and to indemnify the offended party in the amount of Fifty Thousand (P50,000.00) Pesos as moral damages and Twenty Thousand (P20,000.00) Pesos as exemplary damages;

- DEATH in Criminal Case No. 6971-AF and to pay the offended party the amount of Fifty Thousand (P50,000.00) Pesos also as moral and Twenty Thousand (P20,000.00) Pesos as exemplary damages;

- DEATH in Criminal Case No. 6972-AF and to finally indemnify also the offended party in another amount of Fifty Thousand (P50,000.00) Pesos as moral and Twenty Thousand (P20,000.00) Pesos as exemplary damages; and

- To pay the costs of suit.

In his Appellant's Brief,[26] appellant Simeon Cruz interposed the following assignment of errors, to wit:

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED ON A TESTIMONY THAT IS HIGHLY DUBIOUS AND INCREDIBLE; AND

II

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED DESPITE LACK OF INculpATORY EVIDENCE.

Appellant Simeon Cruz characterized the instant criminal charges of rape against him as pure lies

(kasinungalingan) which were allegedly conceived maliciously by his mother-in-law who had an axe to grind against him. He averred that Vanessa went about her daily routine even after each of the alleged sexual abuses were committed against her. She did not disclose the same despite opportunities to do so nor take any initiative to prevent a repetition thereof. In fact, her grandmother did not suspect anything wrong had happened. The medical certificate which was issued by Dra. Lucila Gatchalian, M.D. also attests that Vanessa's vaginal opening admitted only one (1) finger with slight difficulty.

In the review of rape cases, this Court is almost invariably guided by three (3) principles, to wit: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and (3) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.[27] In other words, the credibility of the private complainant is determinative of the outcome of these cases for the crime of rape. It is settled that in rape cases, the lone testimony of the victim, if credible, is enough to sustain a conviction.[28]

Private complainant, Vanessa Cruz, testified in essence that she was raped by her father, herein appellant Simeon Cruz, once in the third week of August, which was a Wednesday evening, and twice in the second and third weeks of November, all in 1994. The trial court found the testimony of the private complainant to be direct and spontaneous. The said court also noted that Vanessa was only twelve (12) years old and a Grade V student in one of the remote towns of Nueva Ecija when she was raped. She broke down in tears on several occasions during the trial of the instant cases,[29] thus giving the trial court the unmistakable impression that she would not impute so grave an accusation against her own father if the same were not true.

We agree. Considering the age of the private complainant, it would be highly improbable for a girl of her age to fabricate a charge so humiliating to herself and to her family had she not been truly subjected to the painful experience of sexual abuse.[30] Indeed, no woman, much less a girl of such tender age, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars.[31]

Besides, after a thorough review, this Court failed to discern any material contradiction in the testimony of Vanessa Cruz that may detract from her credibility. Vanessa testified in a direct and spontaneous manner. She did not waver in asserting that the appellant sexually abused her (3) three times even under the rigorous and extensive cross-examination of the defense counsel. Hence, there is no cogent reason to depart from the time-honored legal principle that when the issue is one of the credibility of witnesses, appellate courts will not disturb the findings of the trial court.[32] The reason for the principle is cited in the case of *People vs. De Guzman*,[33] wherein this Court ruled that the trial judge is in the best position to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrived at an informed and reasoned verdict.

Consequently, the bestiality of the appellant was portrayed vividly by private complainant Vanessa S. Cruz, in her own detailed account, thus:

Atty. Cajucom:

Q: In that month of August, 1994 while you were at the Poblacion, Gen. Natividad, Nueva Ecija, do you remember anything unusual that happened to you?

A: Yes, sir.

Q: Will you please tell the court what is that?

A: In August, 1994 that was the day when my father raped me, sir.

x x x

Q: If your father is here, will you please point to him?

A: (The witness is pointing to a young man inside the courtroom wearing checkered blue long sleeves when asked of his name answered Simeon B. Cruz).

Q: Will you please tell the court how you were raped?

A: I was then sleeping with my sister at the upper part of our house when my father arrived drunk, sir.

Q: When your father arrived drunk, what did he do?

A: My father called for me and I went down stair and he brought me inside the room of our house, sir.

Q: Which room?

A: The room of my father at the lower floor of our house, sir.

Q: How did it (sic) take you to that room?

A: He called me and when I refused he forced me to go with him at his room at the ground floor, sir.

Court:

Q: How did he force you?

A: He pulled me, your honor.

Atty. Cajucom:

Q: When he pulled you, what else did he do?

A: He locked the door of the room, sir.

Q: After locking the door of the room, what else did he do?

A: He poked his knife at my lower right ear, sir.

Q: When he poked the knife to you, what else did he do?

A: He instructed me to undress, sir.

Q: What did you do?

A: I removed my dress, sir.

Q: What part of your dress was removed?

A: My blouse, sir.

Q: What about your underwear?

A: He removed my underwear, sir.

Q: After removing your underwear, what did he do?

A: He kiss (sic) my breast and my private part, sir.

Q: When he was kissing your breast and private part, what did you do?

A: I told him not to do that because I am his daughter, sir.

Atty. Cajucom:

Please record that the witness is crying. (Witness is crying).

Q: When you said that, what did he do?

A: He did not listen to me and instead continued what he is (sic) doing to me, sir.

Q: What is that he continued?

A: He kissed my body and after that he laid me down on the bed, sir.

Q: After laying you down on the bed, what else did he do?

A: He placed himself on top of me, sir.

Q: Was he wearing anything when he placed himself on top of you?

A: Only a t-shirt, sir.

Q: What about his underwear?

A: None, sir.

Q: And when he put himself on top, what else happened?

A: He inserted his penis into my private part, sir.

Q: When he was inserting his private part to your private part, what did you do?

A: None, sir. I just cried.[34]

x x x

Atty. Cajucom:

Q: In the month of November, 1994, do you remember anything unusual that happened to you?

A: Yes, sir.

Q: What is that?

A: That was the second time when my father raped me, sir.

x x x

Q: After locking the room, what else did he do?

A: He removed his dress, sir.

Q: After removing his dress, what else did he do?

A: He removed my dress, sir.

Q: When he was removing your dress, what did you do?

A: I was then crying, sir.

Q: How did you cry?

A: I cried very loud, sir.

Q: While crying, did you say anything?

A: Yes, sir.

Q: What?

A: I told him why you are doing this to me when I am your daughter, sir.

Q: What did he reply?

A: None, sir.

Q: After stating that and without saying anything, what happened?

A: He kiss (sic) me, sir.

Q: After doing that, what else happened?

A: He laid me down on the bed, sir.

Q: While laying on the bed, what else did he do?

A: He instructed me to stand up and hold his penis, sir.

Atty. Cajucom:

Please make it on record that the witness is crying again. (Witness is crying).

Q: Did you hold his penis?

A: Yes, sir.

Q: While holding the penis, what did he say, if any?

A: He instructed me to put his penis into my mouth, sir.

Q: Did you follow him?

A: Yes, sir.

Q: And after that, what happened?

A: After that he instructed me to masturbate his penis, sir.

Q: Did you masturbate his penis?

A: Yes, sir.

Q: After doing that, what happened?

A: After that he laid me down again, sir.

Q: While you were laying (sic) down, what else did he do?

A: He again kiss (sic) me, sir.

Q: After kissing you, what else happened?

A: He kiss (sic) my private part, sir.

Q: What else did he do after that?

A: He placed his body on top of me, sir.

Q: And when he did that, what else happened?

A: He inserted his penis to my private part, sir.

Q: Did he succeed?

A: Yes, sir.

Q: While he was doing that what did you do?

A: I was then crying, sir.

Q: Did you not struggle?

A: I was pushing him, sir.

Q: After that, what else happened?

A: After that he threatened me that if I will reveal the matter he will kill me and my grandmother, sir, if I will report the matter.[35]

x x x

Q: In answer to the court you said that you were twice raped in November, when was the second time in November?

A: Third week in November, sir.

Q: What time of the day?

A: Also in the evening, sir.

Q: What time in the evening?

A: I cannot remember anymore, sir.

Q: How did it happen?

A: He arrived then very drunk, sir.

x x x

Q: What happened when he went up?

A: He took me down stair, sir.

Q: Where at down stair?

A: In his room, sir.

Q: When you were there, what happened?

A: He kiss (sic) my body and laid me down his bed, sir.

Q: When he laid you, were you fully dressed?

A: Yes, sir.

Q: When you were laying (sic) down, what else did he do?

A: He removed my bra, sir.

Q: And then what happened?

A: He removed my short and panty, sir.

Q: What else happened?

A: He kiss (sic) my private part, sir.

Q: And when he was doing that, what were you doing?

A: I was then crying, sir.

Q: Did you say anything?

A: Yes, sir.

Q: What?

A: I told him no don't do that, sir.

Q: What else happened after that?

A: After that, he again placed himself on top of me, sir.

Q: Was he dressed?

A: He removed his dress, sir.

Q: And when he removed his dress what did he do?

A: He kiss (sic) my breast sir.

Q: When he was on top of you what did he do?

A: He inserted his private part to my private part, sir.

Q: Was he able to insert?

A: Yes, sir.

Q: What did you feel when he inserted his penis?

A: Also, I felt pain, sir.

Q: After this incident, did you report this matter to anyone?

A: No, sir. I did not.

Q: Why not?

A: I was afraid to (sic) his threat, sir.[36]

The appellant failed to impute any improper motive on the part of the private complainant. However, he lays the blame on his mother-in-law, Felicidad Santiago, who allegedly had an axe to grind against him over money. He seeks to impress upon this Court that the instant criminal cases were offshoots of his mother-in-law's malicious contrivance which was aimed at exacting revenge against him and to pave the way for her daughter's unhampered homecoming to the Philippines who allegedly maintained an adulterous relationship in Hong Kong where she works.

It is elementary that where there is no showing that the private complainant was impelled by any improper motive in making the accusations against the accused, her complaints are entitled to full faith and credence.[37] The claims of the appellant against his mother-in-law are at best self-serving and too speculative to deserve any serious consideration by the Court. That a grandmother would allegedly be so callous so as to expose her 12-year old granddaughter, Vanessa, to the humiliation and stigma of a rape trial just to satisfy a purely personal interest, defies logic and human experience. We rule that no possible amount of influence from a grandmother can drive a daughter to willingly send her father to the gallows by imputing charges of rape if the same were not true.

Besides, even on the assumption that Marlyn S. Cruz had a paramour in Hong Kong where she works, the same was subsequently condoned by her husband, herein appellant, and had become a consensual matter between them, thus:

Court:

Q: When for the first time that you knew that your wife had a live-in partner?

A: When she went home, Your Honor, on November 30, 1995.

Q: So, you want to impress the court that through overseas call your wife went home and you talked together about her live-in partner?

A: Yes, Your Honor.

Q: Now, when you had talk in November 1995 about her live-in partner, what was your final decision both of you?

A: She informed me that she did that because of our children and if she can already save money she will return home.

Q: So, meaning to say, you agreed with that condition of your wife?

A: At first, Your Honor, I did not agree.

Q: But ultimately, you agreed that's why she left again for abroad?

A: Yes, Your Honor.[38]

Even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to concoct a story which could take the life of her own father and drag herself and the rest of the family to a lifetime of shame.[39] As aptly pointed out by the Solicitor General, the appellant failed to demonstrate that his daughter, Vanessa, suffers from such kind of psychological depravity. On the contrary, Vanessa was found by the trial court as a meek and modest girl.[40] She was also gifted with brilliance, being an honor student, and having graduated from the elementary as one of the top five students in her class.[41]

The appellant also contended that Vanessa appeared unaffected and went about her daily routine even after the alleged sexual abuses. The contention is devoid of merit. It should be emphasized that such alleged unseemly attitude of his daughter does not in any way negate that rape had been committed against her. We have already ruled that people react differently to a given type of situation, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.[42] Additionally, Vanessa's failure to promptly report the incidents of rape may be attributed to her young age and the appellant's moral ascendancy. It may be noted that the appellant threatened Vanessa with death after he perpetrated the dastardly acts against his said daughter. It is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapist's threats on their lives.[43]

In a desperate attempt to extricate himself from the instant charges, appellant Simeon Cruz underscores the particular finding of the attending physician which states that Vanessa's vagina admitted one (1) finger, which was two (2) centimeters in diameter, with slight difficulty. The examining physician, Dra. Lucila Gatchalian, M.D. however, explained on cross-examination that Vanessa was afraid and crying while her hands were perspiring when she came to the hospital on April 30, 1996 for examination. If a woman is afraid, according to Dra. Gatchalian, M.D., vaginismus or the unconscious constriction of the introitus or vaginal opening may happen. In any case, the slight difficulty which occasioned the insertion of a finger, two (2) centimeters in diameter, into the private complainant's vagina does not militate against the fact that she was raped. The said fact is corroborated by the finding in the same medical certificate which shows that Vanessa sustained three (3) hymenal lacerations.

In view of the foregoing, the guilt of the appellant, Simeon B. Cruz, for three (3) counts of the crime of rape has been established beyond reasonable doubt. However, the trial court erred in imposing the supreme penalty of death on the appellant. Section 11 of Republic Act No. 7659 amending Article 335 of the Revised Penal Code provides:

x x x

The death penalty shall be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. xxx

It appears that the criminal complaints in Criminal Cases Nos. 6970-AF, 6971-AF and 6972-AF against appellant Simeon B. Cruz merely allege that the private complainant, Vanessa S. Cruz, is the daughter of the appellant. However, the same criminal complaints failed to allege that the private complainant was a minor or under eighteen (18) years of age at the time when each of the crimes of rape was committed against her. In the cases of *People vs. Garcia*,[44] *People vs. Ramos*[45] and *People vs. Medina*,[46] this Court declared that the attendant circumstances enumerated in Section 11 of R.A. No. 7659 partake of the nature of qualifying circumstances since the same are punishable by the single indivisible penalty of death and not reclusion perpetua to death. It has been the rule that qualifying circumstances must be properly pleaded in the indictment. If the same are not pleaded but proved, they shall be considered only as aggravating circumstances. Despite the absence of allegation in each of the criminal complaints in these cases that the private complainant was a minor or under eighteen (18) years of age at the time of the commission of each of the crimes of rape, the trial court erroneously imposed on the appellant the indivisible penalty of death in violation of his right under Article III, Section 14 of the 1987 Constitution to be informed of the nature and cause of the accusations against him. Consequently, the appellant can be held liable for three (3) counts of simple rape only and for which the impossible penalty is reclusion

perpetua.

In line with prevailing jurisprudence,[47] the civil indemnity ex delicto due the victim shall be in the amount of P50,000.00 in addition to moral damages of P50,000.00 for each count of simple rape and without need of pleading or proof of the basis thereof.

WHEREFORE, premises considered, the Court hereby AFFIRMS the appealed decision convicting the appellant, Simeon B. Cruz, a.k.a. Barok, of three (3) counts of rape with the MODIFICATION that the appellant shall suffer the penalty of reclusion perpetua and to indemnify the victim, herein private complainant Vanessa S. Cruz, in the amount of P50,000.00 as civil indemnity in addition to P50,000.00 as moral damages for each count of the offense proved.

SO ORDERED.

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

Bellosillo, J., on official leave.

[1] Penned by Judge Johnson L. Ballutay. Rollo, pp. 30-42.

[2] TSN dated November 4, 1996, pp. 5-6, 19.

[3] Id., pp. 6-8, 23.

[4] Id., pp. 9-13.

[5] Id., pp. 13-15.

[6] Id., pp. 18, 23-24.

[7] TSN dated November 8, 1996, pp. 10-11.

[8] TSN dated November 4, 1996, pp. 15-16.

[9] Id., pp. 16-17.

[10] Ibid.

[11] Exhibits "A", "A-1".

[12] TSN dated October 21, 1996, pp. 13-14.

[13] Id., pp. 22-23.

[14] TSN dated December 16, 1996, pp. 11-21.

[15] Id., pp. 21-26.

[16] Id., pp. 27-29.

[17] Id., pp. 30-31.

[18] Id., p. 34.

[19] Id., pp. 35-36.

[20] TSN dated January 7, 1997, pp. 15-16.

[21] TSN dated January 20, 1997, pp. 3-6.

[22] TSN dated January 13, 1997, pp. 7-8.

[23] Exhibits “4” and “5”.

[24] TSN dated January 20, 1997, pp. 4-8.

[25] TSN dated February 10, 1997, pp. 4-6.

[26] Rollo, pp. 56-78.

[27] *People vs. Perez*, 270 SCRA 526, 531 (1997).²⁷

[28] *People vs. Quitariano*, 266 SCRA 373, 376 (1997).

[29] Decision, Rollo, pp. 40-41.

[30] *People vs. Molas*, 286 SCRA 684, 690 (1998); *People vs. Dacoba* 289 SCRA 267, 272 (1998).

[31] *People vs. Cabebe*, 290 SCRA 543, 554 (1998).

[32] *People vs. Llaguno*, 285 SCRA 124,135 (1998).

[33] 188 SCRA 407, 410-411 (1990).

[34] TSN dated November 4, 1996, pp. 5-8.

[35] *Id.*, pp. 9-13.

[36] *Id.*, pp. 13-15.

[37] *People vs. Malabago*, 271 SCRA 464, 476 (1997).

[38] TSN dated December 16, 1996, pp. 35-36.

[39] *People vs. Melivo*, 253 SCRA 347,362 (1996).

[40] Decision. Rollo, p. 40.

[41] TSN dated November 13, 1996, pp. 18, 25.

[42] *People vs. Villanueva*, 254 SCRA 202, 208 (1996); *People vs. Talaboc*, 256 SCRA 441, 453 (1996).

[43] *People vs. Devilleres*, 269 SCRA 716, 729 (1997).

[44] 281 SCRA 463, 489 (1997).

[45] G.R. No. 129439, September 25, 1998.

[46] 300 SCRA 98, 116 (1998).

[47] *People vs. Tabarangao*, 303 SCRA 623, 636 (1999).

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