

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELEUTERIO DIMAPILIS, ACCUSED-APPELLANT.

G.R. Nos. 128619-21. December 17, 1998

Ponente: VITUG, J.

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VITUG, J.:

On 18 February 1997, the Regional Trial Court of Makati, Branch 136, rendered its decision in Criminal Case No. 96-1769, Criminal Case No. 96-1770 and Criminal Case No. 96-1771, finding accused-appellant Eleuterio Dimapilis guilty beyond reasonable doubt of the crime of rape on three counts and imposing upon him the DEATH penalty in each case. The trial court concluded:

"WHEREFORE, and in consideration of all the foregoing, the Court finds the accused GUILTY beyond reasonable doubt of the crime of rape on three (3) counts as charged in the above-captioned cases, and it hereby sentences the accused, Eleuterio Dimapilis, to suffer the capital punishment of Death for each count, or of three (3) death penalties, and in addition, to pay the offended party moral damages in the sum of P100,000.00; exemplary damages of P50,000.00; and to pay the cost of the suit.

"SO ORDERED."[1]

The death penalty having been imposed by the trial court, the records were elevated to this Court for automatic review.

Accused-appellant was charged before the court a quo with three counts of rape, allegedly committed in September 1994, February 1996, and May 1996, all in the City of Makati, Metro Manila, Philippines. The three separate informations against the accused read:

In Criminal Case No. 96-1769:

"That in September, 1994, at Batute St., Makati City, within the jurisdiction of this Honorable Court, accused ELEUTERIO DIMAPILIS, did then and there, willfully, and unlawfully and feloniously with force and intimidation, at knife point, had carnal knowledge of his step-daughter, SHARON SALAS y DEGALA then ten (10) years old, against her will and consent.

"CONTRARY TO LAW."

In Criminal case No. 96-1770:

"That in February 1996, at San Antonio Village, Makati City, within the jurisdiction of this Honorable Court, accused ELEUTERIO DIMAPILIS, did then and there, willfully, and unlawfully and feloniously with force and intimidation, at knife point, had carnal knowledge of his step-daughter, SHARON SALAS y DEGALA against her will and consent.

"CONTRARY TO LAW."

In Criminal Case No. 96-1771:

"That in May, 1996, at Makati City, within the jurisdiction of this Honorable Court, accused ELEUTERIO DIMAPILIS, did then and there, willfully, and unlawfully and feloniously with force and intimidation, at knife point, had carnal knowledge of his step-daughter, SHARON SALAS y DEGALA against her will and consent.

CONTRARY TO LAW."[2]

The cases were tried jointly. The reception of the evidence shortly followed after the accused had entered his plea of "Not Guilty" at the arraignment.

The trial court, in its decision, narrated quite adequately the respective versions of the prosecution and the defense. Thus:

The Evidence for the Prosecution:

"The private complainant's story in the three above-captioned cases, out of the five, (the two had been allegedly committed by the accused in June, 1993, at Sta. Ana, Manila; and in February, 1994, at FTI, Taguig, hence outside the jurisdiction of this Court), portrays a tragic and sad predicament of a girl who, after her parents separated, finds herself, her brothers and sisters, in a no-choice situation wherein they are to live together with a man, who was supposed to be a substitute-father to them, all because that man is a live-in partner of her mother.

"She is the eldest of the five (5) children born out of the union of her natural father and mother. Next to her is Sheila, who lives with her Lola Violy, and followed by a twins, Josephine and Budoy, the former lives in Tarlac and the latter stays with her aunt in Roxas City; the youngest, Lito, 5, lives with her mother and the accused.

"Sharon's story (the complainant in these cases) chronicles the helpless plight of a girl, at age ten, without a father, and because of compelling circumstances, she and her three small siblings had to depend upon the accused for their sustenance nay, survival, completely unsuspecting that, like some other girls of her age, she too, would fall victim of the heinous crime of rape in the hands of, no less, the common-law husband of her mother.

"Her complaint-story runs this wise:

"Sometime in June, 1993 at 10: 00 in the morning, at Sta. Ana, Manila, while her sisters were sent out of the house after giving them money, and while her mother and the accused Eleuterio Dimapilis were already living together as husband and wife, the said accused, using a knife, threatened her with bodily harm and required her to undress. With the accused also undressed, he put his finger into her vagina and tried to insert his penis. Later on, the accused rubbed his penis into her private organ. Her mother, and her Aunt Alice were out of the house gambling somewhere at Batute Street.

"This sexual abuse against her was repeated by the accused under the same circumstances: In February, 1994 in the evening at FTI, Taguig, Rizal, and while her sisters were taking a bath in the rain, she was similarly threatened by the accused with a knife and forced her to undress and then the accused also undressed, they laid down: and then accused fingered her vagina. When accused can not insert his penis, he rubbed it into her vagina. (p. 5, TSN, Nov. 20, 1996).

"In September, 1994, again, accused raped her at 1: 00 in the afternoon, at Batute St., Makati, while her sisters and brother were playing in the backyard, again, with the use of a knife and threatening her with bodily harm, she was told to undress and the accused himself also disrobed and tried to insert his penis against her vagina. She saw white liquid coming out the penis of the accused. This happened while her mother and her Aunt Alice were out gambling and they usually come home at 8: 30 in the evening.

"Again, the same incident was followed twice, sometime in February and May of 1996, both at PNR, San

Antonio Village, Makati. Despite the pain she felt and as she cried, she did not shout or ask for help because the accused was poking a knife at her (p. 6, T.S.N., Nov. 20, 1996). In February, 1996, at 2: 00 p.m., when her brother and sisters were playing, she was sexually abused by the accused under the same way and circumstances - the use of a knife and under threat of being killed if she resists as previously employed by the accused.

"In the same place in May, 1996, at 3: 00 in the afternoon and while her brothers and sisters were playing outside, again, and the accused sexually molested her. The accused, undressed and she, without clothes, lied down behind the door, their bodies blocking it from being opened. (pp. 12-13, T.S.N., Nov. 21, 1996).

"After being sexually abused for at least five (5) times, she mustered enough courage to report to her mother, Linda Degala, the date of which she could no longer recall, and her mother promised to look into the truth of her complaint. Later on, her mother just shrugged off her complaint by branding the acts of the accused being complained of were just 'lambing.'

"Thus, on May 19, 1996, she reported to her 'Lola Violy' the sexual abuses committed against her and she was brought to the National Bureau of Investigation on May 20, 1996 where she filed a complaint against the accused and she was investigated by NBI agent Gil C. Maciano (on May 23, 1996) at the NBI Headquarters at Taft Ave., Manila, and to whom she gave a sworn statement (Exhibits 'A.' 'A-1' and 'A-2'). Also at the NBI, She was examined by a medico-legal doctor. On July 14, 1996, she executed a 'Karagdagang Salaysay' (Exhibited 'B' to 'B-2'). She gave additional sworn statement, dated July 14, 1994 (Exhibit 'C').

"Explaining the *modus operandi* of the accused, Sharon, the complainant, said that, in June, 1993 while her family was staying in Sta. Ana, Manila, she leaves the house early at 6:00 a.m. in going to school, and comes home at 12:00 noon, and at 4:00 p.m. that day she was sexually abused by the accused since only the two of them were in the house because the accused, (whom she calls 'papa') had sent her brothers and sisters out of the house after giving them money. The accused was not working then because he had a fever.

"Then, in February, 1994, at FTI, Taguig, Rizal, the accused who came home at 7:00 in the evening allowed her brothers and sisters to take a bath in the rain as the accused committed the act of raping her.

"In September of 1994, at Batute St., Makati City, the third in series, the accused committed the sexual act inside the house while her brothers and sisters were playing at the backyard; and the fourth incident happened in February of 1996, at 2:00 in the afternoon, at PNR, San Antonio Village, while her brothers and sisters were laying in front of the house; the jeepney driven by the accused had bogged down; and in May, 1996, at about 3:00 p.m., also at PNR, San Antonio Village, Makati, she was raped by the accused while again, her brothers and sisters were playing outside the house.

"In these series of rape incidents, she had not shouted for help because accused was pointing a knife at her and threatened to kill her (pp. 12-14, TSN, Nov. 21, 1996). In fact, after the accused had finished raping her, the accused would still poke the knife at her even in the presence of her brother and sisters, and the accused would say that 'she and the accused were just playing' (p. 15, TSN, Nov. 26, 1996).

"Her 'Lola Violy' whose full name is Violeta Benjamin, testified that it was while she was on her way home on May 19, 1996, when she overheard Sharon's mother (Linda Salas), Alma Bayot, Rosemarie Trapisora, her nieces, arguing among themselves and then Linda Salas shouted 'it is none of your business, she is my daughter' thus, prompting her to go upstairs and inquired what the matter was all about. Sharon was there present, and whom she asked why the former did not like to come home with her mother and Sharon complained that she could no longer bear what her 'step-father' was doing to her: 'hindi na raw po niya makayanan ang pakikialam sa kanya ni Dakila' (accused Eleuterio Dimapilis).

"She then, and there, brought Sharon on that same day, May 19, 1996 to the NBI, and, the following day, May 20, 1996, Sharon was medically examined and investigated. A medical certificate was issued by Dr. Aurea B.

Villena, a medico-legal officer II of the NBI who testified that she noted in Sharon's private organ a healed superficial hymenal laceration at 3 o'clock position. Her medical findings are contained in a report under Case No. MG-96-744 (Exh. 'F'). The laceration she noted in the private organ of the complainant occurred more than three (3) months before May 20, 1996. In the course of conducting the medical examination, she interviewed Sharon about the incident and the former claimed that in 1993, while dressing up, the accused entered the room and then and there placed his finger into her private part and that, it was in 1995 that the accused penetrated the genital part of her organ. It is probable that penetration was committed in September, 1994 (p. 7, T.S.N., Dec. 3, 1996). When she was raped by the accused for the first time in June, 1993, she was only ten years old (p. 6, T.S.N., Nov. 28, 1996), she having been born on February 13, 1983 (Exh. 'D'). The old healed superficial laceration found in the private organ of Sharon was up to half of the width of the hymen; and that, the superficial laceration can be caused by the penetration of the tip of the penis into the hymen of the vagina. The hymenal laceration is compatible with the commission of the offense."[3]

The Evidence for the Defense:

"The accused testified in his defense and denied all the charges in the three separate informations charging him of the crime of rape, claiming he has 'no knowledge about those charges, sir.' And pointing out that the incidents attributed to him happened while he was driving his jeepney; he usually leaves the house at 5:00 a.m. and comes home at 9:00 or 10:00 in the evening; he said: 'that I am driving my jeep and plying my route, sir. Aside (sic) her mother is in the house and also attending to her children.' (p. 10, T.S.N. Dec. 20, 1996)

"Contrary to Sharon's claim, he has no permanent alternate-driver substituting for him. Instead, he chooses his own replacement; he also denies that his live-in-partner, the mother of Sharon, gambles, pointing out that his income is hardly enough to provide for the needs of his family. But, he admits that for at least eight times, he had changed the jeepney he was driving and that he hangs around the racing club, especially on Wednesdays and Saturdays - to try his luck. (p.13, T.S.N., Dec. 20, 1996)

"He does not know why Sharon had charged him of rape when the fact of the matter was that he had not done anything wrong against Sharon whom he treated like her own daughter. The only reason he could think of why Sharon had accused him of rape was due to grudge Sharon's 'Lola Violy' had against him because he had broken the windows of the latter's house.

"Besides, he learned from his live-in partner that the latter's aunt, Lola Violy, was against his live-in relationship with Sharon's mother. He admitted, however, that since 1992 when he started living with Sharon's mother as his common-law wife, it was only after his arrest that he learned from his common-law wife that Sharon's 'Lola Violy' disliked him.

"When he asked Sharon why she accused him of rape, the grandmother of Sharon instead answered and accused him of having destroyed Sharon's future.

"Although he claims to be leaving the house at 5:00 a.m. and comes home at 9:00 to 10:00 in the evening, there were times when he eats his lunch at home and takes a rest. (p. 9, T.S.N. Dec. 20, 1996). The 'paradahan' where jeepneys are parked while the drivers are resting is near his house.

"He has a 20-day old daughter by his live-in partner, the mother of Sharon Salas.

"Denying that he had sexual intercourse with Sharon Salas, he pointed out that the latter no longer lives with him in May, 1996, and Sharon's mother would only tell him whenever Sharon pays a visit. Sharon at that time works in a parlor with her Tita Alma.

"He had residence in Mayapis St. or PNR railroad, San Antonio Village, Makati from February to May 1996, although he can not recall exactly the dates when he transferred residence (p. 22, T.S.N., Dec. 20, 1996).

"After his arrest at the corner of Ponte and Zapote Streets, Makati, he was brought to the NBI office where he

saw Sharon and the latter's grandmother. He was informed of the accusation filed against him with the NBI by Sharon Salas. After he was informed of his constitutional rights, one of which is the right to counsel, he was brought before an inquest prosecutor.

"At times he also worked as a stuntman.

"2ND DEFENSE WITNESS:

"Linda Degala, the mother of the private complainant and live-in partner of the accused denied the charges of her daughter against the accused contending that she is always in the house and does not go out gambling as claimed by the private complainant.

"She has difficulty in recalling the particular place where she resided at a given date or period of time. She merely recalls to have resided at Batute St., Makati, and in 1995, at Taguig, Metro Manila.

"Her sister with 3 children, a brother, her aunt and the latter's sister lived with her in September, 1994, at Batute St., Makati, in a space measuring 2 x 4 meters, but stayed with her for 2 or 3 months only – on a visit only (p. 8, T.S.N., Jan. 8, 1997).

"Her family had a series of transfers of residences, to wit:

"In 1992, in Punta, Sta. Ana, for three months; to Taguig, for two months; to Batute for 'few months'; to her aunt in the province;

"In February, 1996, she stayed at Mayapis St., San Antonio Village, only the four of them lived together - she, the accused, Sharon and Lito.

"The accused leaves the house at 4:00 a.m. and comes home at night while Sharon leaves at 7:00 a.m. and comes home at 2:00 p.m. (p. 12, T.S.N., Jan. 8, 1997).

"In February, 1996, she had no infant to take care of and all that she does in the house was to wash and iron clothes. She no longer gambles.

"Her common-law husband treats his children by her legal husband as though they were his own.

"When she was residing at Mayapis St., San Antonio Village, only her daughter Sharon and her son, Lito were the ones living with her and her common-law husband, the accused.

"When the accused was detained at the NBI he informed her that a case of rape was filed by Sharon against him, and 'it was only last week when she asked Sharon whether there is truth to her charge against her common-law husband.' (p. 19, T.S.N., Jan. 8, 1997).

"Despite her claim that she is always in the house and does only household chores, she did not strive to talk to Sharon to ascertain the truth about the latter's complaint. She was not shocked about the information from her daughter, Sharon, to the effect that the latter was sexually molested. She was only surprised. (p. 20, T.S.N., Jan. 8, 1997).

"She seems to suggest that despite her having learned that there was findings by the NBI medico-legal officer of superficial hymenal laceration in the vagina of Sharon, she still believes that Sharon filed the complaint against her common-law husband because her aunt, Lola Violy, entertained a grudge against the accused.

"She admitted that 'eversince this case started, I was already forewarned by my aunt to separate from my common-law husband, however, I found it not . . . because I have learned to love him because our relationship is good, your honor.' (p. 20, T.S.N., Jan. 8, 1997).

"She can not recall the birth year of her daughter Sheila, and her twins " Junior and Josephine, also her

youngest, Lito. She wrongly stated the birth year of Sharon to be 1963 (instead of 1983) and also her birthday " February 14th instead of February 13th." [4]

Assailing his conviction by the court a quo which found for the prosecution, Eleuterio Dimapilis raised a lone assignment of error in his appeal brief and contended that -

"The Court a quo gravely erred in finding the accused-appellant guilty of three (3) counts of rape beyond reasonable doubt and sentencing him to suffer three (3) death penalties, and in addition, to pay P100,000.00 as moral damages; P50,000.00 by way of exemplary damages; and to pay cost of suit." [5]

Accused-appellant initially argues that the Informations filed against him are defective for failing to allege the specific dates of commission of the three counts of rape. This claim is not tenable. An information is legally viable as long as it distinctly states the statutory designation of the offense and the acts or omissions constitutive thereof. [6] Section 6 and Section 11, Rule 110, of the Revised Rules of Court provide:

"SEC. 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed.

"When an offense is committed by more than one person, all of them shall be included in the complaint or information."

"xxx xxx xxx

"SEC. 11. Time of the commission of the offense. - It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit."

In the crime of rape, the time of its commission is not "a material ingredient of the offense." Nevertheless, a reading of the Informations, heretofore recited, would readily reveal satisfactory compliance with the rules holding, in effect, that it would quite suffice if the acts complained of are alleged to have taken place "as near to the actual date at which the offense(s) (are) committed as the information or complaint will permit." The Court is convinced that there has, at the very least, been substantial observance of the rules and that, unquestionably, appellant has been properly apprised of the charges proffered against him. In any event, it is now too late in the day to question the form or substance of the Informations. In entering his plea, when arraigned, he did so without so much putting up any objection to the sufficiency of the information. Section 8, Rule 117, of the Rules of Court pertinently states:

"SEC. 8. Failure to move to quash or to allege any ground therefor. - The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion shall be deemed a waiver of the grounds of a motion to quash, except the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction of the offense or penalty and jeopardy, as provided for in paragraphs (a), (b), (f) and (h) of Section 3 of this Rule."

Relative to the assertion of appellant that the informations filed against him did not come about at the instance of the victim but at the initiative of Violeta Benjamin, an aunt of the complainant's mother, the sworn statement, dated 23 May 1996, [7] of the victim and her "Karagdagang Salaysay" of 29 May 1996 [8] and 08 July 1996, [9] would disclose otherwise.

She testified:

"Q

What happened when you were brought to the NBI by your lola?

"A

We filed a complaint, Your Honor.

COURT

Proceed madam counsel.

"PROS. ALEJO

"Q

Was your complaint reduced in writing Sharon at the NBI?

"A

Yes ma'am.

"Q

I am showing to you here . . .

"COURT

"Q

At the NBI, what happened?

"A

I narrated all the incidents, Your Honor.

"Q

What do you mean by that? that you were investigated by the NBI?

"A

Yes, Your Honor.

"Q

Now, in this investigation you were asked question and you answered those questions, is that what you mean?

"A

Yes, Your Honor.

"Q

Now, those questions that were asked of you and the answers to those questions were reduced in writing, is that right?

"A

Yes, Your Honor, firstly it was reduced in writing and then in typewritten form, Your Honor.

"COURT

Proceed madam counsel.

"PROS. ALEJO

"Q

Sharon, I am showing to you this document denominated as Malayang salaysay na ibinigay kay Investigator, Gil C. Miciano ngayong ika-23 ng Mayo sa NBI, Taft Manila.

"PROS. ALEJO

What relation has this document to the investigation reduced in writing that you are talking about just awhile ago?

"WITNESS

"A

This is the one ma'am.

"Q

Sharon, there is a signature here above the name Sharon Salas y Degala, do you know whose signature is this?

"A

That is mine, ma'am.

"PROS. ALEJO

May we request Your Honor that this document be marked as Exhibit 'A' for the prosecution.

"COURT

Mark it.

"INTERPRETER

Yes, Your Honor.

"PROS. ALEJO

Likewise the signature appearing on top of the typewritten name Sharon Salas y Degala . . .

"COURT

What is the middle name?

"PROS. ALEJO

Degala, Your Honor. So the signature of the witness above the typewritten name Sharon Salas y Degala be marked as Exhibit 'A-1' for the prosecution.

"COURT

Mark it.

"INTERPRETER

Yes, Your Honor.

"PROS. ALEJO

Was the thumbmarked appearing on top of the signature of Sharon D. Salas be marked as Exhibit 'A-2' for the prosecution.

"COURT

Mark it.

"INTERPRETER

Yes, Your Honor.

"PROS. ALEJO

Sharon, aside from this sinumpaang salaysay dated May 23, 1996 which you executed before the NBI, were there other statements executed by you, if any, at the NBI?

"A

There was, Your Honor.

"Q

Now, I have with me Sharon a document labelled as 'karagdagang salaysay, what relation has this document to the additional statement reduced in writing that you mentioned?

"A

That is the one ma'am.

"PROS. ALEJO

Your Honor, may we request that this document be marked as Exhibit 'B' for the prosecution.

"COURT

Mark it.

"INTERPRETER

Yes, Your Honor.

"PROS. ALEJO

Sharon, again in this document, there is a signature on top of the typewritten name Sharon Salas y Degala, do you know whose signature is this?

"WITNESS

"A

That is my signature ma'am.

"PROS. ALEJO

How about . . . may we request that the signature on top of the typewritten name Sharon Salas y Degala be marked as Exhibit 'B-1' for the prosecution, Your Honor.

"COURT

Mark it.

"INTERPRETER

Yes, Your Honor.

"PROS. ALEJO

On top of this signature, there is a thumbmarked, do you know whose thumbmark is this?

"A

Yes sir.

"Q

Whose thumbmark was that?

"A

Mine ma'am.

"PROS. ALEJO

May we request Your Honor that this thumbmark appearing on top of the signature of Sharon Salas y Degala be marked as Exhibit 'B-2' for the prosecution.

"COURT

Mark it."[10]

The testimony given in open court by the victim pictured a detailed account of the rape incidents. Responding to the questions posed to her, she made her narration in a manner better than that which can generally be expected of a young and innocent girl of thirteen years of age.

"Q

On said date Sharon . . . I mean in June 1993 at Sta. Ana, Manila, was there an unusual incident that happened, if ever there was?

"A

There was, ma'am.

"Q

What is that incident Sharon?

"A

I was threatened with a knife by my 'tiyo', he required me to undress and he too undressed himself, and thereafter he 'fingered' my private part and he tried to insert his penis into my vagina . . .

"ATTY. NALDOZA

May we object Your Honor, the witness is stating her testimony into a narrative form, Your Honor.

"COURT

I think, we can allow the statement to remain on record, it appearing that the answer to the question is

responsive because the question that preceded the answer was whether or not there was an unusual incident so the answer of the witness to the effect that she was threatened with a knife and then required to undress and his 'tiyo' also undressed. . .

"COURT

Is that the end of the answer?

"INTERPRETER

No, Your Honor, then he fingered my private part . . .

"COURT

Thereafter 'fingered' my private part . . . perhaps the statement of the witness in vernacular should likewise stated in the record for emphasis.

"INTERPRETER

'At pilit po niyang ipinapasok ang kanyang ari sa ari ko'. . .

"COURT

And was trying hard to insert his penis into my private part. Is that the end of the statement?

"INTERPRETER

Yes, Your Honor.

"COURT

Proceed madam prosecutor.

"ATTY. ALEJO

You mentioned about your 'tiyo' Sharon, to whom are you referring to?

"WITNESS

"A

To my 'papa,' ma'am.

"Q

Who is your 'papa'?

"A

He is Eleuterio Dimapilis, ma'am.

"Q

If this Eleuterio Dimapilis is inside this courtroom now, can you point him out to this Honorable Court?

"A

Yes ma'am.

"ATTY. ALEJO

Point him.

"INTERPRETER

Witness is pointing to a male person inside the courtroom who stood up and when asked of his name, answered the name ELEUTERIO DIMAPILIS.

"X X X X X X X X

"ATTY. ALEJO

When the incident happened, was your mother not around?

"A

She was not in the place ma'am.

"Q

Where is your mother?

"A

She was gambling ma'am.

"XXX XXX XXX

"ATTY. ALEJO

"Q

Was this incident repeated Sharon?

"A

Yes ma'am.

"Q

When did this happen?

"A

In February 1994 ma'am at the FTI.

"Q

How come that this happened at FTI Taguig when you were living in Sta. Ana, Manila?

"A

We transferred our residence to FTI Taguig ma'am.

"Q

So, what exactly happened at FTI Taguig Sharon?

"A

The same manner that he did to me in Sta. Ana, Manila ma'am, he threatened me with a knife and ordered me to undress and he himself undressed too, then lay me down, fingered my private part and trying to insert his

organ into my private part and when he can not do so, he just rubbed his penis into my vagina, ma'am.

"COURT

Is that all the accused did on that incident, only rubbing his penis into your vagina?

"WITNESS

"A

Yes, Your Honor.

"COURT

No more?

"ATTY. ALEJO

The witness said Your Honor that the accused was trying to insert his penis into her vagina and when he can not do so, he just rubbed his penis into her vagina.

"COURT

Probably the offended party told you that but the Court did not hear her say that.

"ATTY. ALEJO

I heard she stated that, Your Honor.

"COURT

Why did you inquire from the Interpreter to translate. So what was the statement of the witness?

"INTERPRETER

She said . . .

"COURT

She said she was made to lie down and the accused fingered her vagina and since he can not insert his penis into her vagina, he just rubbed his penis into her vagina, is that the statement of the witness.

"ATTY. ALEJO

Yes, your Honor.

"COURT

Proceed madam counsel.

"ATTY. ALEJO

"Q

Where was your mother when this things happened?

"A

She was also gambling ma'am.

"Q

Do you mean to say that your mother always gamble?

"A

Yes ma'am.

"xxx xxx xxx

"ATTY. ALEJO

"Q

The incident that occurred at FTI Taguig and Sta. Ana, Manila, were they repeated if ever?

"WITNESS

"A

Yes ma'am.

"Q

When were these incidents repeated?

"A

In February 1994 ma'am.

"Q

I believe that was in FTI the incident in February 1994. Aside from that incident at FTI Taguig, was the incident repeated?

"A

Yes ma'am.

"Q

When was this repeated?

"A

In September 1994 in our place at Batute street, ma'am.

"Q

How come that the incident at Batute street when you were living in FTI Taguig?

"COURT

What year was that when the incident took place at Batute street?

"ATTY. ALEJO

In September 1994, Your Honor.

"COURT

What was the answer of the witness?

"WITNESS

"A

Because we transferred at Batute street, Your Honor.

"ATTY. ALEJO

So what exactly happened at Batute street in September 1994?

"WITNESS

"A

In the same manner that he did to me previously madam, he threatened me with a knife, required me to undress myself and he too undressed himself, fingered me and was trying hard to insert his penis into my vagina and when he can not do so, he just rubbed his penis into my vagina madam.

"Q

Again Sharon was your mother around when this things happened?

"A

None madam.

"Q

Where was your mother?

"A

She was gambling madam.

"xxx xxx xxx

"COURT

Wait a minute. You claimed that in the September 1994 incident at Batute street, the accused succeeded in inserting his penis into your vagina, did you not say that?

"WITNESS

"A

Yes, Your Honor.

"COURT

Considering your age and fragile frame or body frame, did you not feel any pain when the accused allegedly put into your vagina his penis?

"A

I felt pain, Your Honor.

"COURT

If you felt pain when the accused inserted his penis into your vagina, what did you do or how did you react at the time the accused was inserting his penis into your vagina?

"A

I cried, Your Honor.

"COURT

Did it occur to your mind to shout and ask for help?

"A

No, I did not because at that time he was poking his knife on me, Your Honor.

"COURT

But the September 1994 incident at Batute street according to you was the third time that you were raped and you want the court to believe that in this instance which was the third time when you were raped, the accused continued to threaten you with a knife?

"A

Yes, Your Honor.

"COURT

Proceed madam counsel.

"ATTY. ALEJO

Sharon, this incident in September 1994 . . .

"COURT

When the accused succeeded in putting his penis into your vagina, what happened?

"WITNESS

"A

I cried, Your Honor.

"COURT

What was the accused doing after he succeeded in putting his penis into your vagina?

"A

No answer.

"PROS ALEJO

May we manifest for the record Your Honor that the witness when the incident happened in 1994, I think she was only 11 years old, Your Honor.

"COURT

How long did the incident last after he has placed his penis into your vagina?

"A

For a short time, Your Honor.

"Q

How did the incident end?

"A

He pulled his penis and then again rubbed the same into my private organ, Your Honor.

"Q

Then again, after he rubbed his penis into your private organ, what happened?

"A

Something came out from his penis, Your Honor.

"Q

Why do you know that something came out from his penis?

"A

Because it was wet, Your Honor.

"Q

How do you know that it was wet?

"A

Because after he was finished, he went to the comfort room, Your Honor.

"Q

So, what happened in the comfort room?

"A

I saw something colored white, Your Honor.

"Q

What about your vagina, did it bleed?

"A

Yes, Your Honor.

"Q

After you went to the comfort room and observed this white liquid which you claimed to have emitted from the penis of the accused, what did the accused tell you, if any?

"A

He told me not to report the incident to anybody, Your Honor.

"Q

What did you say to that, if you said anything?

"A

I told him, yes Your Honor.

"COURT

Proceed madam prosecutor.

"PROS. ALEJO

"Q

Now, this incident in September 1994 at Batute, was this repeated, if ever?

"A

Yes, ma'am.

"Q

If that was repeated, when was this repeated?

"A

No answer yet.

"COURT

Before you proceed madam counsel, in what part of the house at Batute were you raped by the accused?

"A

In the house of my aunt, Your Honor.

"Q

Yes, the court realizes that, but what part of the house of your aunt did he execute this offense?

"A

Inside the house, Your Honor.

"Q

Yes inside the house, was it in the ground floor, in the second floor or where?

"A

In the first floor, Your Honor.

"Q

All right, in the first floor, was it in the sala? in the sofa? in the bed? or in the floor?

"A

On the floor, Your Honor.

"PROS. ALEJO

Your Honor please, I think the place is only a one room place.

"COURT

So, it is a one room place?

"WITNESS

"A

Yes, Your Honor.

"COURT

Proceed madam counsel.

"PROS. ALEJO

"Q

When you say one room, you already have the sala, the bed and the kitchen?

"WITNESS

"A

Yes ma'am.

"xxx xxx xxx

"PROS. ALEJO

"Q

This incident in September 1994 at Batute Makati, was this incident repeated Sharon?

"A

Yes ma'am.

"Q

When was this repeated?

"A

It was in February 1996, ma'am.

"Q

February 1996 also at Batute?

"A

No ma'am.

"Q

So where was this incident repeated?

"A

At San Antonio Village ma'am.

"Q

Do you mean to say that you again transferred residence from Batute to San Antonio Village, Makati City?

"A

Yes ma'am.

"Q

At what specific place in San Antonio, Makati City was this incident repeated?

"A

Yes ma'am.

"Q

Where?

"A

In the place where we are living ma'am.

"Q

Where did you live then?

"A

At San Antonio Village near the railroad ma'am.

"Q

What specifically happened in February 1996 at the railroad of San Antonio Village, Makati City?

"WITNESS:

"A

The same manner that he did to me in the other places, and that, he threatened me with a knife, he ordered me to undress and he himself undressed also and then he tried to insert his penis into my vagina and when he can not do so, he just rubbed his penis into my private part ma'am.

"PROS. ALEJO

"Q

Where was your mother when this incident occurred?

"A

She was also gambling, ma'am.

"Q

Do you mean to tell us Sharon that your mother gambles everyday?

"A

Yes ma'am.

"Q

What did you do when the accused again raped you?

"A

I told him that I did not like anymore the act, ma'am.

"Q

What did he tell you, if any, after you told him that you did not like anymore the things she was doing to you?

"A

He told me to just keep quiet because he will kill me, ma'am.

"Q

What did you do when he told you he was going to kill you?

"A

Nothing more, ma'am.

"Q

Sharon, was the incident in February 1996 at San Antonio Village repeated, if ever?

"A

Yes ma'am.

"Q

When was this repeated?

"A

It was in May 1996, ma'am.

"Q

Where was this incident repeated?

"A

San Antonio village ma'am.

"Q

Do you mean that this incident was repeated in the same house or in the same place?

"A

Yes ma'am.

"Q

So what did the accused do to you in May 1996?

"A

He again poked a knife on me, ordered me to undress and he too undressed himself and then he tried to insert his penis into my vagina and when he can not insert it, he rubbed his penis into my private part ma'am.

"Q

Where was your mother at the time when this incident happened?

"A

She was gambling ma'am.

"Q

Sharon, did you ever tell anybody about these incidents?

"A

Yes, ma'am.

"Q

To whom did you tell these incidents?

"A

To my grandmother, Violy Benjamin ma'am.

"Q

How did Violy Benjamin become your grandmother, how is she related to you?

"A

My mother is her niece ma'am.

"Q

How did you tell your Lola Violy about these things?

"A

I told her that I was being molested by my stepfather ma'am.

"Q

By the way Sharon, was this incident in May 1996 repeated, if ever?

"WITNESS

"A

No more, ma'am."[11]

The trial court has found the testimony of complainant Sharon Salas to be credible and convincing. This Court shares that view. The testimony of the unsuspecting victim, detailing the sexual assault on her, can only be given by one who has been subjected to it.[12] Then, again, no ill-motive has been attributed to the complainant for making the accusation and entrenched is the rule that the testimony of a rape victim must be taken to be credible under such circumstance.[13] And, for another, no decent girl would go through the trouble of exposing herself to the humiliation of trial and public scandal for so debasing an offense as rape except for a strong motive to seek justice.[14]

The defense of alibi raised by accused-appellant (he claims to have been out in the streets plying his jeepney on

the dates of the alleged rape incidents) deserves no merit at all. For this defense to prosper, the accused must prove, among other things, that not only has he been at some other place at the time of commission of the crime but that it has been likewise physically impossible for him to be at the locus criminis at the time thereof. In this requirements, he has miserably failed. Moreover, the uncorroborated claim of accused-appellant cannot hold water against the positive identification of the offender testified to by private complainant.[15]

In order that the crime of rape may be said to be consummated, the successful penetration by the rapist of the female's genital organ is not indispensable. Penile invasion, it has often been held, necessarily entails contact with the labia and even the briefest of contacts under circumstances of force, intimidation or unconsciousness, even without laceration of the hymen, is deemed to be rape in our jurisprudence.[16] It would, in fine, be enough in a conviction for rape that there is an entrance of the male organ within the labia of the pudendum of the female organ. Neither the penetration of the penis beyond the lips of the vagina nor the rupture of the hymen is indispensable to justify conviction.

The medical certificate[17] issued by the National Bureau of Investigation ("NBI") indeed confirmed the presence of an old healed hymenal laceration. This finding was reiterated by the medico-legal officer, Dra. Auria P. Villena, in her testimony.

"ATTY.____: So, madam witness, what was your findings after examining Sharon Salas on May 20, 1996?

"WITNESS: The most significant finding was, an old healed superficial laceration of the hymen.

"COURT: Superficial hymenal laceration on the . . . ?

"WITNESS: On the hymen, your Honor.

"COURT: Of the private part of the . . .

"WITNESS: Of the hymen, your Honor.

"COURT: Yes . . . hymen in the private organ of the victim?

"WITNESS: Yes, your Honor.

"ATTY.____: Doctor, will you please explain to this Honorable Court your conclusion that there was an old healed superficial hymenal laceration . . . laceration present on the person of Sharon Salas?

"WITNESS: This means that the laceration that I have seen happened more than three months before the date of the examination, ma'am.

"ATTY.____: So, what could have caused said hymenal laceration?

"WITNESS: Under normal cause of events, hymenal lacerations are caused by sexual intercourse."[18]

The offense of rape I defined and made punishable by Article 335 of the Revised Penal Code; this law, as amended by Section 11 of Republic Act No. 7659,[19] reads:

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

"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by reclusion perpetua.

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

"When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

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

"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.

"2. When the victim is under the custody of the police or military authorities.

"3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

"4. When the victim is a religious or a child below seven (7) years old.

"5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

"6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

"7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."

The victim was born on 13 February 1983; accordingly, when the first incident of rape was committed in September 1994, the victim was only eleven (11) years old which makes the offense one of statutory rape. The gravamen of statutory rape is the carnal knowledge of a woman below twelve years of age.[20] Although she was already above twelve (12) years old when she suffered similar sexual assaults in February and May of 1996, accused-appellant, however, would each time poke a knife at her to cow her to submission.[21]

The death penalty is imposed when "the victim is under eighteen years of age and the offender is x x x the common law spouse of the parent of the victim." [22] The victim is the daughter of appellant's common-law spouse. Ordinarily, the case would have thus meant the imposition of the mandatory death penalty. Quite fortunately for appellant, however, he would be spared this extreme punishment. The relationship between appellant and his victim- the victim is the daughter of appellant's common-law spouse by the latter's previous relationship with another man - is a qualifying circumstance that has not been properly alleged in the information which erroneously referred to the victim as being, instead, "step-daughter" of appellant. A step-daughter is a daughter of one's spouse by a previous marriage[23] or the daughter of one of the spouses by a former marriage.[24] This Court has successively ruled[25] that the circumstances under the amendatory provisions of Section 11 of Republic Act 7659 the attendance of any which mandates the single indivisible penalty of death, instead of the standard penalty of reclusion perpetua to death prescribed in Article 335 of the Revised Penal Code, are in the nature of qualifying circumstances. Unlike a generic aggravating circumstance which may be proved even if not alleged,[26] a qualifying aggravating cannot be proved as such unless alleged in the information although it may be proved as a generic aggravating circumstance if so included among those enumerated in the

Code.[27] Obviously, the technical flaw[28] committed by the prosecution in this instance is a matter that cannot be ignored, and it constrains the Court to reduce the penalty of death imposed by the trial court to that of reclusion perpetua.

In line with the prevailing jurisprudence, an additional award of civil indemnity ex delicto of P50,000.00 is made in favor of the offended party for each count of rape.

WHEREFORE, the decision of the Regional Trial Court of Makati City, Branch 136 in Criminal Case Nos. 96-1769 to 1771 finding appellant guilty beyond reasonable doubt of rape, on three counts, is **AFFIRMED**, with the **MODIFICATION** (a) that the sentence is reduced in each case from Death to Reclusion Perpetua and (b) that accused-appellant is likewise ordered to indemnify the offended party, Sharon Salas, in the additional amount of P50,000.00 for each count of rape consistently with the foregoing disquisition of the Court. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, Purisima, and Pardo, J.J., concur.

[1] Rollo, p. 34.

[2] Rollo , pp. 19-20.

[3] Rollo, pp. 20-25.

[4] Rollo , pp. 25-29.

[5] Rollo, p. 150.

[6] Sta. Rita vs. Court of Appeals, 247 SCRA 484.

[7] Exhibits A, A-1 and A-2; Records, p. 81.

[8] Exhibits B, B-1 and B-2; Records, p. 82.

[9] Exhibits C, C-1 and C-1-a; Records, pp. 83-84.

[10] TSN, 20 November 1996, pp. 13-15.

[11] TSN, 20 November 1996, pp. 4-12.

[12] People vs. Esquila, 254 SCRA 140.

[13] People vs. Caguioa, Sr., 259 SCRA 403.

[14] People vs. Gaban, 262 SCRA 593; People vs, Andres, 253 SCRA 751.

[15] People vs. Umali, 242 SCRA 17.

[16] See People vs. Evangelista, 282 SCRA 37.

[17] Records, p.27.

[18] TSN, 03 December 1996, p. 6.

[19] The amendatory law, Republic Act No. 7659, became effective on 31 December 1993 (People vs. Godoy,

250 SCRA 676). The more recent enactment, Republic Act No. 8353, entitled "AN ACT EXPANDNG THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES," being neither favorable nor unfavorable to the accused, is inconsequential in this instance.

[20] People vs. Remoto, 244 SCRA 506.

[21] People vs. Espinoza, 247 SCRA 66.

[22] People vs. Echegaray, 257 SCRA 561.

[23] Webster's Dictionary, 1996, Second Edition.

[24] Black's Law Dictionary, Sixth Edition.

[25] People vs. Ilao, G.R. No. 129529, 29 September 1998; People vs. Ramos, G.R. No. 129439, 25 September 1998; People vs. Garcia, 281 SCRA 463.

[26] People vs. Godinez, 106 Phil. 597; People vs. Butler, 120 SCRA 281.

[27] People vs. Guba, 42 SCRA 109; People vs. Lacao, 60 SCRA 89.

[28] United States vs. Campo, 23 Phil. 369; People vs. Borbano, 76 Phil. 702; People vs. Jovellano, 56 SCRA 156; People vs. Cantre, 186 SCRA 76; People vs. Buka, 205 SCRA 567; People vs. Vergara, 221 SCRA 611; People vs. Rodico, 249 SCRA 309.

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