

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CANDIDO SOLOMON Y MARQUEZ, DEFENDANT-APPELLANT.

G.R. Nos. 130517-21. July 16, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

For automatic review is the decision of the Regional Trial Court of Zamboanga City, Branch 16,[1] finding appellant Candido Solomon y Marquez guilty of five (5) counts of rape and imposing upon him five (5) death penalties.

Except as to the date of commission of the crime, the five (5) complaints filed in these cases are similarly worded. The complaint filed in Criminal Case No. 14114 reads:

That on or about June 16, 1995, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, by means of threats and intimidation, did then and there willfully, unlawfully and feloniously, have carnal knowledge of his own step-daughter, the undersigned CHARLYN FERNANDEZ y ANGELES, 15 years of age, against her will.

Contrary to law.[2]

The complaints in Criminal Cases Nos. 14115 to 14118 allege that the crime of rape was perpetrated against the same complainant four more times on July 5, 1995,[3] July 10, 1995,[4] August 3, 1995,[5] and August 12, 1995.[6]

Upon arraignment, the accused, herein appellant Candido Solomon y Marquez, pleaded not guilty to each charge of rape.[7]

Complainant Charlyn Fernandez[8] was born on October 22, 1982 to spouses Felizardo and Julia Fernandez. The couple had five other children with ages ranging from eleven to twenty-five years. In 1985, the couple separated.

Soon thereafter, Charlyn's mother started living together with appellant. At the time of Charlyn's testimony, Julia had borne appellant five children: Pilar (7), twins Fernando and Angeline (5), Valentino (3), Robert (1), and Carding (5 months). Pilar and Fernando have passed away.

During the time material to these cases, Charlyn was living with appellant, Julia, the couple's three surviving children, and Charlyn's full-blood siblings, Felizardo, Jr. and Joven. They lived in a one-room nipa house with stairs leading to the lumber floor where the family slept. Their nearest neighbor lived around 300 meters away.

Charlyn was at home when the first alleged rape took place at around 1:00 p.m. on June 16, 1995. She and her half-brothers, three year-old Valentino and one year-old Robert, were sleeping when she felt someone on top of her. That person turned out to be appellant. He was holding her right shoulder as his left hand removed her panty, having first succeeded in peeling off her shorts while she slept. Charlyn struggled and kicked. Frightened, she cried and repeatedly shouted, "No ma ya Pang!" ("Pang, do not do it!")

After taking off Charlyn's panty, appellant knelt near Charlyn's feet and inserted his right index finger into Charlyn's vagina, pushing and pulling it ("ta tucha-tucha") inside her for some time. Charlyn tried to stand up but appellant pushed her down. He assured her that he would "not inflict" pain on her. After removing his shorts and briefs, appellant spread Charlyn's legs and inserted his penis into her vagina. He told Charlyn, "No man alboroto. Si man alboroto tu, ay mata yo contigo." ("Do not make any noise. If you will make noise, I will kill you.") Charlyn felt appellant's penis inside her vagina and experienced pain as appellant moved "up and down." Charlyn pushed and kicked him but he proved too heavy for her. It was the first time Charlyn experienced sexual intercourse and her vagina bled.

Charlyn did not know if appellant ejaculated but he stood up, put on his briefs and shorts, and went out of the house. Charlyn sat up and cried. Her brothers, who awoke as appellant inserted his finger into her sex organ, were also crying.

The second rape took place less than a month later, on July 5, 1995, at about 1:00 p.m. Charlyn was again sleeping on the floor with her brothers Valentino and Robert when she felt someone on top of her. Appellant was trying to remove her shorts and panty with his left hand. His other hand held her forearm. Charlyn pushed and kicked him but he pressed her down. He warned her, "Do not keep on moving because [I] will choke [you]." Charlyn cried, "Pang, no ma ya Pang!" Appellant knelt by her feet and removed his shorts and briefs with one hand and pressed her down with the other. Charlyn cried and tried to stand up. Appellant then lay on top of her and inserted his penis into her vagina. While Charlyn did not see appellant's penis, she felt its size inside her. As appellant performed the sexual act, Charlyn again cried out, "No ma ya, Pang!" Appellant answered, "Do not keep on moving because I will not inflict any pain on you." After completing the sex act, appellant sat beside Charlyn and put on his briefs. Charlyn sat by the corner and cried. Appellant warned her not to report the incident to her mother otherwise he would kill all of them. He then went out of the house. Charlyn's brothers remained sleeping and did not witness what happened.

The third rape occurred on July 10, 1995. Charlyn was at home putting her brothers Valentino and Robert to sleep when appellant arrived and asked Charlyn for a cake of soap. After Charlyn handed him one, appellant left and Charlyn went to sleep on the floor beside her brothers. About thirty minutes later, Charlyn felt someone on top of her. Appellant had returned and was pressing her arm with his hand. His foot also pressed against hers. She cried, "No ma ya, Pang! You are always doing it to me." Appellant released her arm and used the hand he was holding it with to remove Charlyn's panty. He knelt by her feet and removed his shorts and briefs. His right hand pressed Charlyn down to prevent her from standing. Appellant then began to mount her as Charlyn cried and tried to push him away. Despite her struggles, appellant succeeded in inserting his penis into Charlyn's vagina. He told her not to push him as he was not inflicting pain upon her. Charlyn felt pain as appellant performed "up and down" motions. She cried, "No ma ya, Pang." Afterwards, appellant stood up, got dressed, and went out of the house. Charlyn sat up and cried.

Robert and Valentino were awake when the incident took place.

The horrors Charlyn underwent in the hands of appellant did not end that day. Appellant would have his way with Charlyn two more times.

Charlyn and her brothers were sleeping on the floor of their house in the afternoon of August 3, 1995. At around 4:00 p.m., Charlyn was again startled to find her stepfather on top of her. She kicked him, not wanting to be raped again. She pushed him away and cried to no avail. His left hand removed her panty as his other hand pressed down on her, preventing her from standing up. Appellant removed his shorts and briefs. He placed himself on top of her, inserted his penis into her vagina, and moved up and down. Charlyn felt her vagina ache. She tried to push him away but he was too heavy for her. Satisfied, appellant stood up and walked away. Her brothers again

witnessed what happened.

On August 12, 1995, Charlyn again was left to care for her brothers Valentino and Robert. Charlyn was in the midst of slumber when appellant mounted her. He told her not to make any noise so as not to awaken her brothers. Charlyn shouted, “No ma ya, Pang!” Appellant held her two arms and pressed her against the floor. He knelt up and removed his short and briefs as his other hand pressed down her chest, preventing her from standing up. He removed her shorts and panty, inserted his penis into her vagina, and moved up and down. She cried as she felt pain in her vagina. Thereafter, he stood up, got dressed and left her lying in tears. This time, her brothers had not awakened to see Charlyn raped.

On each occasion that she was raped, Charlyn’s mother was in the market, selling tuba. She did not tell her mother about the rapes because she was afraid that appellant would carry out his threat to kill them should she report the incidents.[9]

Charlyn, on the witness stand, said she could recall the exact dates when she was raped since she made an effort to remember them. She also remembered the time the rapes occurred because she and her brothers usually took their naps at the same time in the afternoon.[10]

Unable to bear appellant’s molestations any longer, Charlyn left home for Tugbungan in September 1995. Charlyn asked Julia’s permission to work as a maid in the home of Dr. Allan Navarro, a cousin of Julia.

Charlyn revealed to her Kuya Allan that appellant raped her. Allan, in turn, told Julia about the sexual abuse that Charlyn suffered in the hands of appellant. On March 15, 1996, Julia visited Charlyn and confronted her. The latter admitted that appellant indeed raped her.

Subsequently, Julia reported the alleged rape incidents to Barangay Captain Bing Ungab, who in turn reported the matter to the police. In the afternoon of April 15, 1996, the police fetched Charlyn and appellant and brought them to the police station, where Charlyn executed a written statement.[11] She also submitted to a physical examination, which revealed that she was seven months pregnant. The police then brought Charlyn to the Department of Social Welfare and Development, where she stayed for a month.

Charlyn noticed that her belly was bulging sometime in March 1996 while she was staying with Allan Navarro. Subsequently, Charlyn delivered a baby boy at the Zamboanga Medical Center. She gave the baby to Luis Acejaas, her brother’s employer, because she could not afford to buy milk for him. She was sure that appellant sired her baby because he was the only one who ever had sexual intercourse with her.

Charlyn, before the rape incidents, had been closer to appellant than to her own father. She called him “Papa” and described him as a “good stepfather” to her. She said she had no idea why he raped her.[12] She denied that she filed the complaint because her pregnancy had become evident.[13]

Charlyn’s mother Julia testified she and her husband Felizardo separated in 1985. That same year, appellant asked Julia’s father permission to live with Julia. Julia and appellant did not marry because appellant himself was married. Appellant and his wife had nine (9) children of their own. Appellant was a tuba gatherer. To complement appellant’s occupation, Julia engaged in the sale of the native liquor two kilometers away from their house in Cawit. She would start selling tuba in the morning and return home between 6:00 and 7:00 p.m. every day.

When Allan informed her of Charlyn’s pregnancy, Julia confronted her daughter. Charlyn told her that it was her “stepfather” who impregnated her. Julia brought Charlyn to her sister Lydia’s house. Charlyn confided to Lydia that she was pregnant with appellant’s child.

At home in Cawit, Julia asked appellant why he impregnated Charlyn. Appellant cried and asked her forgiveness.

He explained that things “simply happen” and pleaded that they settle the matter. Julia told him she “could not do anything because there is a law.” Apprehensive of what Charlyn’s brother might do to appellant, Julia decided to complain to the barangay captain, who encouraged her to settle the matter among them. Nevertheless, the barangay captain still reported the matter to the police.[14]

Inspector Diosdado Apias testified on the investigation conducted after the police brought appellant to the police station.[15] He confirmed that a certain kagawad accompanied Charlyn and Julia to the police, that Charlyn signed the complaint, that PO2 Imlan referred the case to SPO2 Concepcion for investigation, and that the police took appellant into custody.[16]

Dr. Rodolfo Valmoria, PNP Medico-Legal Officer of the Philippine National Police, conducted Charlyn’s physical examination. He prepared Medico-Legal Report No. M-134-96[17] dated April 16, 1996 stating:

FINDINGS:

Absence of pubic hair. Labia majora full, convex and gaping, labia minora dark brown in color and presenting in between is a fleshy type hymen with deep healed lacerations at 7, 8, 11, 2 and 3 o’clock positions and shallow healed at 9 o’clock position. Vaginal canal narrow, easily admits examining index finger. Abdomen distended, fundic level 6 fingers above the umbilicus. Fetal heart beat appreciable at left middle quadrant of the abdomen, 2 inches left of the umbilicus, 126/minute. Breasts hemispherical in shape, congested, no secretions noted. Areolae and nipples dark brown in color.

Urethral, vaginal and cervical smears neg for grm neg diplo, no pus cells, neg for sperm cell, bacilli many.

CONCLUSION:

Subject is of non-virgin state physically.

Pregnancy compatible 7-8 months.

Testifying in court, Dr. Valmoria stated that the various hymenal lacerations indicated that the subject had engaged in “several sexual contact[s].” He estimated the subject’s last menstrual period to be either August or September 1995.[18] Dr. Valmoria did not find any external physical injuries on Charlyn’s body.[19]

The defense presented appellant, 55, as its only witness. Candido Marquez admitted that he had sexual intercourse with Charlyn on several occasions but claimed that he “did not force” himself on Charlyn.

One time, appellant intentionally touched Charlyn’s breast as he got the baby Charlyn was carrying. Charlyn did not protest. He repeated the act on several other occasions but each time Charlyn did not get mad and just smiled at him. Appellant realized that she would not complain should he initiate sexual relations with her.

On June 16, 1995, at around 10:00 p.m., appellant was drying copra at the coconut kiln with Charlyn and Felizardo, Jr. Junior was at a distance, piling coconut husks when Charlyn picked up an old galvanized iron sheet and placed it on top of an old truck. Appellant was watching her over the coconut pile when Charlyn called him. He did not mind her at first. Charlyn then got the radio from Junior, brought it to the truck, and turned down the volume. She invited him to come to her, “Pang, aqui ya lang kita hunto dormi.” (“Pang, we’ll sleep here together.”) By then, Junior was sleeping on a pile of coconut husks. When appellant went to Charlyn, she said, “Pang, aqui lang kita dos.” (“Pang, we’ll stay here together.”) He lay down beside her in a supine position. She turned to him and placed her left leg (tanday) over his private part (na demiyo pututoy). Ten minutes later, she started moving her leg upward. Appellant started to entertain “second thought[s]” as his penis hardened. Since Charlyn did not complain when he touched her before, appellant took a chance and asked her to remove her shorts. Charlyn obliged. Appellant then unzipped his shorts. They engaged in sexual intercourse for around twelve minutes “in a side view position,” facing each other.

Appellant and Charlyn again had sexual intercourse in Upper Cawit on July 5, 1995, at around 10:30 a.m. Appellant was then peeling coconuts with Charlyn and her brother Jovit. Thirsty, appellant told Jovit to fetch water. Charlyn then got a sack, spread it on the ground, and lay down. After ten minutes, appellant got tired and sat down beside her. Charlyn touched his left side with her left hand. It occurred to him that Charlyn again wanted to experience what happened between them by the coconut kiln so they had sexual intercourse.

Appellant and Charlyn engaged in their third sexual encounter on July 10, 1996 while in the house of a certain Pendong. Appellant arrived at around 11:00 a.m. and instructed Charlyn to cook the fish he had brought home. After taking their lunch, Valentino, Robert and Angeline went down the house to play. Appellant and Charlyn were seated on the bench when she asked him what time her mother would arrive. He told her that she would come home late in the afternoon.

Appellant then touched Charlyn's breast. Charlyn simply smiled and did not protest. Appellant told her to close the door and asked her if she would like to have sex with him. She replied by closing the main door. Upon appellant's invitation, Charlyn entered the room. Appellant and Charlyn kissed. She obliged when appellant asked her to remove her shorts. Appellant also started to undress. As they were lying down, she embraced him and opened her legs. Appellant continued to kiss Charlyn as they engaged in coitus, her legs on the back of his thighs. Charlyn moved her head "just like in the movies" as appellant caressed her. Like their first coitus, it was Charlyn who experienced orgasm first. "Considering [appellant's] age," they had sex for only twelve minutes.

The fourth sexual intercourse occurred on the third of August 1995. Appellant arrived home at 4:00 p.m. and found Charlyn seated on the floor, folding clothes. She asked if appellant wanted to change his shorts. Charlyn looked intently at him as he took off his shorts. Appellant reached for the new pair of shorts held by Charlyn, but she pulled it back jokingly. He thought that there was "malice" in her because pulling back the shorts forced him to sit down beside her. Appellant asked her why she did that but Charlyn just smiled. She held his shoulder and lay down. Appellant told her to remove her skirt and the girl complied. He told her that since she was willing to remove her skirt, surely, she could also remove her panty. Again, she obliged. Appellant took off his briefs and they engaged in sexual intercourse. She moved her head around and emitted a sound that manifested pleasure. Charlyn "ejaculated" first; her sex organ was wet. She and appellant had sex for ten minutes only because he was in a hurry and had to go somewhere else. He said he did not need to intimidate her because he had been "using her already."

On August 12, 1995, at 10:00 a.m., Valentino and Robert were in the river, more or less 200 meters away from Pendong's house. Charlyn came into the house. She had just returned from the river where she washed the clothes and took a bath. She went inside the room and removed her clothes. Appellant looked at her and remarked, "Why are you already burlisque (sic)?" Charlyn just smiled and the two exchanged looks. Appellant approached her and placed his arm around her. Charlyn was looking at appellant as if she wanted to be kissed and appellant kissed her. She did not resist. Appellant told her to lie down as he removed his shorts. Fearing that the children might come up the house any time, appellant left his briefs clinging to his leg. She held the back of his head and they had sexual intercourse. Once again, he noticed that she "ejaculated" ahead of him because when he touched her private part, it was "slippery." [20]

On rebuttal, Charlyn refuted appellant's testimony that she had sex with him at the tapahan. [21] She claimed that she and her siblings never slept there. Charlyn reiterated that appellant forced her to have sexual intercourse and denied that she had an orgasm. She said that she did not know what an orgasm was. [22]

The defense presented appellant on sur-rebuttal. He maintained that the house where he allegedly raped Charlyn was demolished in 1992, before the supposed rapes took place. [23]

After trial, the RTC rendered its decision, the dispositive portion of which reads:

WHEREFORE, the Court finds accused CANDIDO SOLOMON y MARQUEZ GUILTY BEYOND REASONABLE DOUBT of the crimes of Rape defined and penalized under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, committed against his stepdaughter, Charlyn Fernandez y Angeles, and sentences him as follows:

- In Criminal Case No. 14114, to suffer the penalty of DEATH and its accessory penalties, in the manner provided by law;
- In Criminal Case No. 14115, to suffer the penalty of DEATH and its accessory penalties, in the manner provided by law;
- In Criminal Case No. 14116, to suffer the penalty of DEATH and its accessory penalties, in the manner provided by law;
- In Criminal Case No. 14117, to suffer the penalty of DEATH and its accessory penalties, in the manner provided by law;
- In Criminal Case No. 14118, to suffer the penalty of DEATH and its accessory penalties, in the manner provided by law; and
- To pay the offended party, Charlyn Fernandez y Angeles, moral damages of P50,000.00 in each of the five cases or a total of P250,000.00 and exemplary damages in the amount of P25,000.00 in each of the five (5) cases or a total of P175,000.00, and to pay the costs.

Let the complete records of these cases be forwarded to the Supreme Court for automatic review and judgment as provided by law.

SO ORDERED.[24]

Appellant contends that the trial court erred in finding him guilty because the prosecution evidence is insufficient to overcome the constitutional presumption of innocence. He cites various reasons for this conclusion. First, it is highly improbable that the five rapes were committed in such an identical manner. Moreover, her failure to escape after the first assault indicates that she consented to the sexual intercourse. Second, if indeed the victim struggled, kicked and pushed appellant during the assaults while she was in a supine position, it is “incredible” that she “did not sustain external injuries.” Third, it is inconsistent with human experience that the victim’s brothers would either just sleep through the rapes or just watch what was happening without putting up a defense for their half-sister. Fourth, the victim’s delay of nine months in reporting the crimes rendered the charge of rape doubtful. Finally, there was no threat or intimidation in the commission of the alleged crimes. Complainant’s admission that appellant did not have a weapon and that he was “kind” to her “only shows that no amount of force or intimidation was employed” by him and that complainant consented to the sexual intercourse.

Appellant’s contentions boil down to the issue of credibility. As a rule, this Court does not disturb the factual findings of the trial court. It gives these great weight and respect since the trial court had the opportunity to observe the demeanor of the witnesses during the trial. Thus, where there is no showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could affect the result of the case, there is no reason to accord a contrary treatment to the credibility of prosecution witnesses and their testimonies.[25]

In this case, the trial court stamped full faith and credence on the complainant as a witness and on her testimony. The trial court found “no reason to doubt her candor and sincerity, and the credibility of her testimony that she was raped by her stepfather.”[26]

Indeed, a rural girl barely thirteen years of age,[27] who reached only the third grade,[28] who associated bomba films with war pictures,[29] and who had no idea where babies come from[30] could not have the guile to accuse appellant, whom she described as a “good stepfather,” of rape. The defense did not successfully establish any motive on her part to impute such grave crimes upon appellant. In the face of this omission by the defense, her testimony should be accorded full credence.[31] in another rape case involving a victim who was twelve years and six months old, the Court said:

x x x the declarations on the witness stand of rape victims who are young and immature deserve full credence (People v. Bernaldez, 294 SCRA 317 [1998]). Succinctly, when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified were not true (People v. Clopino, 290 SCRA 432 [1998]). In addition, we take cognizance of the trial court’s observation on the segment of the Filipino society to which the victim belongs - almost illiterate, having attended school up to the third grade only, and so poor that she had to go to a neighbor’s house to watch television, yet one who values her virginity which like a “mirror, once dropped and broken . . . can no longer be pieced together . . . not ever,” this being “true among the Filipino folks [to which] complainant belonged, poor and helpless, everything is entrusted to God.”[32]

Complainant’s credibility cannot therefore be doubted. Her straightforward revelation of her sexual ordeal shows no other intention than to obtain justice for the wrong committed by appellant against her. Indeed, her mother first objected to the filing of charges against appellant. Complainant also knew that appellant might be sentenced to death. Notwithstanding that knowledge, and over her mother’s initial objections, she testified against him, praying that the death sentence be meted upon appellant. What he did to her, she said, she would “carr[y] forever.”[33]

That complainant’s testimony regarding the manner by which she was raped, i.e., she was asleep when appellant would start to sexually abuse her, was “uniform” or “identical,” does not diminish her credibility. Indeed, it is easily explained by the daily routine that appellant’s second family had adopted. By his own admission, appellant was a coconut farm worker who had all the opportunity to be alone with the complainant once his common-law wife had left to sell tuba. Men are creatures of habit and are bound to adopt a course of action that has proven to be successful. As appellant was able to fulfill his lustful designs upon complainant the first time, it comes as no surprise that he would repeat the horrific acts when the circumstances obtaining in the first rape again presented themselves

Complainant’s youth partly accounts for her failure to escape appellant’s lust. A young girl like complainant cannot be expected to have the intelligence to defy what she may have perceived as the substitute parental authority that appellant wielded over her. That complainant had to bear more sexual assaults from appellant before she mustered enough courage to escape his bestiality does not imply that she willingly submitted to his desires. Neither was she expected to follow the ordinary course that other women in the same situation would have taken. There is no standard form of behavior when one is confronted by a shocking incident. Verily, under emotional stress, the human mind is not expected to follow a predictable path.[34]

That the prosecution did not prove that complainant suffered external injuries is easy to explain. Complainant’s physical examination was conducted around eight (8) months after the last rape incident; hence, scratches, abrasions or hematomas were no longer manifest on complainant’s body.

Appellant’s observation of the “incredible” behavior displayed by complainant’s two half-brothers, his own sons, who witnessed the sexual assaults thrice and slept through them twice, has no merit. The two boys were mere toddlers who would have no idea that their father was committing rape before their very eyes. Neither could they

be expected to defend their twelve-year old half-sister against their own father. As the Solicitor General keenly observed:

No legal conclusion may be made from the fact that at certain times complainant's younger brothers were awakened and witnessed the rapes and, at other times, they did not. In *People v. Faigano x x x* the Court observed that the fact that the victim's 4-month old son and 3-year old niece were not awakened during the rape is simply normal because of their tender age. It noted that "[o]ne may suppose that children sleep more soundly than grown-ups and are not easily disturbed by the gyrations and exertions of adults in the night." That they did not come to the aid of their sister nor relate to their kin what they saw was hardly surprising. To be sure, these children had no inkling that what they were witnessing was a hideous crime against the chastity and the person of their sister. The concept of rape is beyond the comprehension of these children. With their limited knowledge, it is safe to infer that what they only knew then was that their sister was crying and their stepfather was making her cry. Whether they knew she needed their assistance at that moment was not only difficult to determine, but also impossible to expect. Their failure to relate the incident to anybody was hardly surprising, since it was only Charlyn Fernandez who was with them most of the time. In fact, she had to stop schooling to take care of them (TSN, January 9, 1997 [2:00 p.m.], p. 28). Their mother usually arrived home late in the day, at times, did not even spend the night with them. Even if these children [had] fantastic memories, they [had] practically no one to relate to other than Charlyn Fernandez herself.[35]

The prosecution's failure to present the two toddlers as corroborative witnesses is not fatal to its cause. Under Section 5, Rule 110 of the Rules of Court, all criminal actions shall be prosecuted under the direction and control of the prosecutor. The defense, therefore, may not dictate to the prosecution the choice of its witnesses.[36] Moreover, the children may be disqualified as witnesses by reason of their mental capacity or immaturity.[37] In any case, the sole testimony of the victim is sufficient basis for conviction in rape, a crime usually committed in seclusion.[38]

It is inaccurate for appellant to claim that complainant reported her repeated defilement only after nine months. The undisputed prosecution evidence is that complainant revealed that appellant had raped her to Dr. Allan Navarro in September 1995, less than a month from her last rape on August 15, 1995. At any rate, her hesitation may be attributed to her age, the moral ascendancy of the accused over her, and his threats against her.[39] In this case, note should be taken of the following circumstances vis-à-vis the complainant's alleged delay in reporting the crimes: she was a rural lass a few months short of thirteen years of age; she had limited education; her fear that her mother would get mad at her should she reveal her sexual molestation by appellant; she considered the culprit as her stepfather to whom she was closer than her own father; and, finally, his threats to kill everyone in the family should she report the repeated commission of the crime of rape against her

Appellant also makes capital of complainant's admission that when the crimes were committed he was not carrying a weapon with which to intimidate her. She also said that he was kind to her.

Article 335, as amended by Section 11 of Republic Act No. 7659, states in part:

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;

x x x x x x x x x

The death penalty shall also 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;

x x x x x x x x.

Rape may thus be committed with the use of either force or intimidation. In this case, each of the five complaints alleges that the crime was committed “by means of threats and intimidation.” There was, therefore, no need to prove the use of force. What the prosecution needed to prove was the presence of sufficient intimidation to cow complainant to submit to appellant’s lustful desires.

The prosecution successfully established that appellant employed intimidation when he had sexual intercourse with complainant on June 16, 1995. As appellant inserted his penis into complainant’s vagina, he warned her, “No man alboroto. Si man alboroto tu, ay mata yo contigo.” (Do not make any noise. If you will make noise, I will kill you.)[40]

Intimidation was also present when appellant had carnal knowledge of complainant on July 5, 1995. As appellant was removing complainant’s panty, she pushed and kicked him. Complainant’s struggling prompted appellant to warn her not to keep on moving, otherwise he would choke her.[41]

On the other three occasions, appellant used his weight to press against complainant and render her resistance futile. There is no evidence that appellant uttered any threatening words or that he brandished any weapon. Apparently, appellant employed force rather than intimidation to subdue complainant into submission on those three occasions.

The trial court appears to have considered the “overbearing moral influence” that appellant exercised over complainant as a substitute for intimidation.[42] In *People vs. Alberto Chua*,[43] however, this Court held that the moral ascendancy of the accused in incestuous rapes, alone, does not lead to the conclusion that intimidation was present. Neither do threats against the victim not to report the rape, by themselves, constitute sufficient intimidation.

There is nothing in Chenny’s testimony that shows how appellant intimidated her into giving him her body. Intimidation breaks down the victim’s moral resistance and makes her submit to the evil in order to escape what she conceives to be a greater evil. There is no proof of what greater evil Chenny had to escape that made her submit to her father’s carnal desires. The mere fact that appellant is her father and therefore exercises moral ascendancy over his daughter cannot ipso facto lead this Court to conclude that there was intimidation. There must be some evidence of the intimidation employed on the victim as to indubitably show how vitiated the victim’s consent was to the violation of her womanhood. After all, rape is committed against or without the consent of the victim. The very first time appellant violated Chenny, he did not use any weapon to threaten her into submission. Neither did appellant threaten her with blackmail or words of terror. He warned her not to tell her mother because if she did, her mother will surely kill him and she will land in jail and no one will take care of Chenny and her younger brothers and sisters. These words of doom may give the reason why Chenny did not report the incident or incidents to her mother, her aunt or other people; but they do not show how they brainwashed her into giving in to appellant’s lustful desires. The doomsday scenario is not per se sufficient to establish the psychological terror that made the girl submit to her father. The court cannot rely on presumptions of moral ascendancy, for in this new century where more change, it could well be that in certain cases, the traditional moral ascendancy of a parent over children is a myth. Presumptions of moral ascendancy cannot and should not prevail over the constitutional presumption of innocence. Force or intimidation is an element of the crime of rape. There must, therefore, be proof beyond reasonable doubt that the victim did not resist her defloration due to the

moral ascendancy of the accused.

As the prosecution alleged but failed to prove that appellant employed intimidation in the rapes that transpired on July 10, August 3 and 12, 1995, he must be acquitted of such charges.

As regards the rapes occurring on June 16 and July 5, 1995, the penalty of death imposed for said crime by the trial court is reduced to reclusion perpetua in each case.

To warrant the imposition of the death penalty, the information must clearly allege and the evidence must prove beyond reasonable doubt the existence of the twin conditions of minority of the victim and her relationship to the accused. This requirement rests on the constitutional principle that an accused is entitled to be informed of the nature and cause of the accusations against him. As such, he can only be convicted of the crime alleged in the complaint or information and duly proven during trial.[44]

The complaints in this case erroneously allege that appellant was her “stepfather.” The word “step,” when used as a prefix in conjunction with a degree of relationship, indicates relationship by affinity.[45] A stepdaughter is thus the “daughter of one’s legal spouse by a previous marriage.”[46] Corollarily, as used in the law defining and penalizing the crime of rape, a “stepfather” is the legal husband of the victim’s mother by virtue of a marriage subsequent to that of which the victim is the offspring.[47]

The allegation that appellant was complainant’s stepfather is belied by Julia Fernandez’s testimony that she was not married to appellant and that she was only living in with him.[48] Appellant also testified that he was married to a certain Arsenia Noblesala.[49] Appellant was therefore but a common-law spouse to Julia. While a common-law husband is subject to punishment by death for raping his common-law wife’s daughter, the death penalty cannot be imposed on appellant because the relationship alleged in the complaints is different from that actually proven.[50] Appellant may only be found liable for the crime of “simple” rape, which is punishable by reclusion perpetua.[51]

Moral damages are automatically awarded in rape cases involving young girls between thirteen and nineteen years of age without need of any proof[52] considering the immeasurable havoc wrought on their feminine psyche[53] by the crime.

The trial court failed to award civil indemnity in complainant’s favor. Civil indemnity is mandatory upon the finding of the fact of rape; it is automatically imposed upon the accused without need of proof other than the fact of the commission of the rape.[54]

WHEREFORE, in Criminal Case No. 14114, referring to the crime committed on June 16, 1995, appellant Candido Solomon y Marquez is found GUILTY of rape and is sentenced to suffer the penalty of reclusion perpetua. Appellant is ordered to pay complainant Charlyn Fernandez the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

In Criminal Case No. 14115, referring to the crime committed on July 5, 1995, appellant is found GUILTY of rape and is sentenced to suffer the penalty of reclusion perpetua. Appellant is ordered to pay complainant the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

In Criminal Case Nos. 14116, 14117 and 14118, appellant is ACQUITTED for failure of the prosecution to establish his guilt beyond reasonable doubt.

SO ORDERED.

Bellosillo, Puno, Vitug, Mendoza, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

Davide, Jr., C.J., on official leave. Panganiban, J., abroad on official business.

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- [1] Presided by Judge Jesus C. Carbon, Jr.
[2] Records, Criminal Case No. 14114, p. 1.
[3] Records, Criminal Case No. 14115, p. 1.
[4] Records, Criminal Case No. 14116, p. 1.
[5] Records, Criminal Case No. 14117, p. 1.
[6] Records, Criminal Case No. 14118, p. 1.
[7] Records, Criminal Case No. 14114, p. 21.
[8] Sometimes referred to as “Charlene” in the transcript of stenographic notes.
[9] TSN, January 8, 1997, pp. 3-62.
[10] TSN, January 9, 1997, a.m. session, p. 42.
[11] Exhibit “B.”
[12] TSN, January 9, 1997, a.m. session, pp. 4-34.
[13] TSN, January 9, 1997, p.m. session, p. 47.
[14] TSN, January 10, 1997, pp. 2-19.
[15] The investigating police officer, SPO2 Hermogenes D. Concepcion, before whom Charlyn and Julia executed sworn statements on 17 April 1996, could not be resented as a witness as he was terminally ill of cancer.
[16] TSN, January 10, 1997, pp. 3-6.
[17] Exhibit “J.”
[18] TSN, January 9, 1997, p. 8.
[19] *Id.*, at 16.
[20] TSN, January 14, 1997, a.m. session, pp. 2-44.
[21] TSN, January 14, 1997, p.m. session, p. 36.
[22] *Id.*, at 38-39.
[23] TSN, January 15, 1997, p. 3.
[24] Rollo, pp. 59-60.
[25] *People vs. Dizon*, 339 SCRA 740 (2001).
[26] RTC Decision, p. 20.
[27] TSN, January 8, 1997, p. 3.
[28] TSN, *Id.*, at 5.
[29] TSN, January 9, 1997, a.m. session, p. 46.
[30] TSN, January 9, 1997, p.m. session, p. 34.
[31] *People vs. Sagun*, 303 SCRA 382 (1999).
[32] *People vs. Turco, Jr.*, 337 SCRA 714 (2001).
[33] TSN, January 8, 1997, p.29.
[34] *People vs. Gecomio*, 254 SCRA 82 (1996).
[35] Rollo, pp. 192-193.
[36] *People v. Amamangpang*, 291 SCRA 638 (1998).
[37] Rule 130 of the Rules of Court provides:

SEC. 21. Disqualification by reason of mental incapacity or immaturity.- The following persons cannot be

witnesses:

xxx

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully.

- [38] *People vs. Antonio*, 336 SCRA 366 (2000).
- [39] *People vs. Villanos*, 337 SCRA 78 (2000).
- [40] TSN, January 8, 1997, p. 20.
- [41] *Id.*, at 35.
- [42] Rollo, p. 135, citing *People vs. Mabunga*, 215 SCRA 695 (1992).
- [43] G.R. No. 137841, October 1, 2001.
- [44] *People vs. Arves*, 343 SCRA 123 (2000).
- [45] *People vs. Dela Cuesta*, 342 SCRA 166 (2000).
- [46] *People vs. Amadore*, G.R. Nos. 140669-75 & 140691, April 20, 2001.
- [47] *People vs. Torio*, 318 SCRA 345 (1999).
- [48] TSN, January 10, 1997, p. 4.
- [49] TSN, January 14, 1997, p. 4.
- [50] *People vs. Manggasin*, 306 SCRA 228 (1999).
- [51] Revised Penal Code, Article 335, as amended by Section 11, Republic Act No. 7659.
- [52] *People vs. Padilla*, 301 SCRA 265 (1999).
- [53] *People vs. Sagun*, 303 SCRA 382 (1999).
- [54] *People vs. Larena*, 309 SCRA 305 (1999).

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