

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LAMBERTO VELASQUEZ, ACCUSED-APPELLANT.

G.R. Nos. 132635 & 143872-75. February 21, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated February 12, 1998, of the Regional Trial Court, Branch 59, Angeles City, convicting accused-appellant Lamberto Velasquez of (1) acts of lasciviousness committed against his granddaughter Aira Velasquez and sentencing him to suffer imprisonment from 12 years and 1 day of reclusion temporal minimum, as minimum, to 17 years of reclusion temporal medium, as maximum, and to indemnify Aira Velasquez in the amount of P30,000.00; and (2) rape of his stepdaughter Mary Joy Ocampo and sentencing him to suffer the penalty of death and to indemnify Mary Joy Ocampo in the amount of P50,000.00.

In another case for acts of lasciviousness, accused-appellant was acquitted, while two other ones, also for acts of lasciviousness, were dismissed by the court for lack of jurisdiction.

In Criminal Case No. 97-307, it was alleged--

That sometime in the month of April, 1997, Brgy. Dau, Municipality of Mabalacat, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the grandfather of the complainant, with lewd design and taking advantage of the innocence and tender age of the victim, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of AIRA G. VELASQUEZ, a girl of 2 years of age, by inserting his finger into Aira's vagina, by means of force and against the will of the said complainant.

ALL CONTRARY TO LAW.[2]

In Criminal Case No. 97-308, the charge was--

That sometime in the month of October, 1994, in Brgy. Dau, Municipality of Mabalacat, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the stepfather of the complainant, with lewd design and taking advantage of the innocence and tender age of the victim, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of MARY JOY D. OCAMPO, then 13 years old, by inserting his finger into Mary Joy's vagina, by means of force and against the will of the said complainant.

ALL CONTRARY TO LAW.[3]

In Criminal Case No. 97-309, it was alleged--

That sometime in the month of April, 1997, in Brgy. Dau, Municipality of Mabalacat, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the stepfather of the complainant, with lewd design and taking advantage of the innocence and tender age of the victim, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of MARY

JOY D. OCAMPO, a girl of 16 years of age, by then and there kissing her, caressing and fondling her private parts, by means of force and against the will of the said complainant.

ALL CONTRARY TO LAW.[4]

In Criminal Case No. 97-310, it was recited--

That sometime in the month of March, 1997, in Brgy. Dau, Municipality of Mabalacat, Province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the grandfather of the complainant, with lewd design and taking advantage of the innocence and tender age of the victim, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of KIMBERLY O. VELASQUEZ, a girl of 2 years of age, by inserting his finger into Kimberly's vagina, by means of force and against the will of the said complainant.

ALL CONTRARY TO LAW.[5]

In Criminal Case No. 97-311, it was alleged--

That sometime in the month of October, 1994, in Brgy. Dau, Municipality of Mabalacat, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the stepfather of the complainant, with lewd design and taking advantage of the innocence and tender age of the victim, did then and there willfully, unlawfully and feloniously have carnal knowledge with one MARY JOY D. OCAMPO, then 13 years old, by means of force and against her will and consent.

ALL CONTRARY TO LAW.[6]

Accused-appellant pleaded not guilty to the charges against him,[7] whereupon the cases were consolidated and jointly tried.

The prosecution presented Mary Joy Ocampo, Angelina Velasquez, Ma. Regail Velasquez, Mary Grace Velasquez, Dr. Edwin Manson, and NBI medico-legal officer Dr. Dominic Aguda as witnesses. On the other hand, the defense presented accused-appellant, Adelaido Velasquez, Sonia Velasquez, Mario Manarang, Rochelle Velasquez, Renato Cruz, and Roberto Velasquez as its witnesses.

The evidence for the prosecution is as follows:

Accused-appellant Lamberto Velasquez married Caridad Guevarra on March 14, 1965 and begot six children by her, namely, Randy, Rochelle,[8] Regail, Ranold, Renel,[9] and Ryan. During their marriage, he lived in common-law relation with Dolores Cabinan, by whom he had five children, namely, Robert, Rhea,[10] Roan, Roel, and Judan. He lived with Dolores and their children for more than eight years in a house which they rented from Eladio Dungca.[11]

After Dolores died in 1984,[12] accused-appellant lived in common-law relation with Eladio's married daughter, Angelina.[13] Angelina already had three children by her husband Roberto Ocampo, namely, Mary Grace, Mary Joy, and Edward.[14] She begot two more children by accused-appellant, named Raymond and Raygel. In 1987, accused-appellant's wife, Caridad, died of cancer.[15] On November 8, 1989, accused-appellant married Angelina Dungca[16] and brought his children by Caridad and Dolores to live with them in Angelina's three-bedroom house at 5069 New York Street, Don Cornelio, Dau, Mabalacat, Pampanga.[17]

In October 1994, Mary Joy Ocampo, then 13 years of age, slept in a room she shared with accused-appellant, her mother Angelina, and her two half-brothers, Raygel, 12, and Raymond, 5. When she woke up in the morning, she found accused-appellant beside her on the floor, her mother having left for the market. Accused-appellant kissed her on the mouth and the breasts. Then he raised her shirt, pulled down her shorts and underwear, and kissed her

private parts. Afterward, accused-appellant inserted his middle finger into Mary Joy's vagina. Mary Joy felt a sharp pain and tried to resist by kicking accused-appellant, which made the latter remove his finger although he continued kissing her. Accused-appellant then left, but not before warning her to keep quiet and not to tell anyone what he had done to her.[18]

Mary Joy ran to the bathroom and examined herself. Her underwear had bloodstains, and her vagina was bleeding. She felt pain when she washed herself. Her mother returned as she was about to go to school, but because of fear of accused-appellant she said nothing.[19]

Two weeks later, still in the month of October, while Mary Joy was watching television alone in the living room, accused-appellant approached her and, though she tried to evade him, he succeeded in forcing her to their room. He lowered her shorts and underwear, raised her shirt and bra, and started kissing her. Then he inserted his middle finger into her vagina and later had sexual intercourse with her. Mary Joy cried out in pain, prompting him to stop, although he continued kissing and fondling her.[20]

Up to April 1997, accused-appellant continuously molested Mary Joy, sometimes forcing her to masturbate him and at other times licking her vagina.[21]

Regail Velasquez, accused-appellant's daughter by Caridad, has a daughter named Aira. On April 16, 1997, at 3 o'clock in the afternoon, while Regail was folding clothes, Aira walked into the room crying. Aira complained that her grandfather did something to her, which she demonstrated by opening her right leg and moving one of her right fingers toward her vagina.[22]

Regail did not want to believe her daughter and thought that her father was just joking with the latter. However, Aira started to cry. In the days that followed, she noticed that Aira complained of pain in her vagina while taking a bath. When Regail asked her why her vagina hurt, Aira said it was because of the things her grandfather had been doing to her vagina, showing her mother what had been done to her.[23]

On April 28, 1997, Regail noticed pus coming out of Aira's vagina. She also noticed that her daughter was running a fever, and that her vagina was red and swollen. She took Aira to Dr. Lydia Buyboy, a private physician, who told her that her daughter had lacerations in her vaginal area and that she had probably been fingered. However, the doctor declined to give a medical certificate as she did not want to get involved in any case.[24]

Regail went home and told her stepmother everything. Angelina cried as she could not believe what she had been told. Remembering that a similar thing had happened to her sister-in-law's daughter, Regail talked to Mary Grace.

Mary Grace Ocampo Velasquez, Angelina's daughter, married Ranold Velasquez, accused-appellant's son by Caridad and Regail's brother. Mary Grace testified that she had been molested by her father when she was nine years old. She recalled when, as a new couple, Angelina and accused-appellant spent the night at an aunt's house in San Fernando, Pampanga. Mary Grace was with them. According to Mary Grace, accused-appellant went to her side, raised her clothes, and fondled her breasts. His hands went lower. She was unable to resist accused-appellant's advances because of his strength and threats. To prevent a recurrence of the event, Mary Grace moved out of their house and went to live with her aunt in Angeles City.[25] Kimberly was around Aira's age, and Regail remembered hearing that pus had also come out of the child's vagina. When she told her about Dr. Buyboy's findings, Mary Grace lost no time and took Kimberly to Dr. Buyboy, who made the same findings.[26]

That evening, Mary Grace told her husband Ranold about the doctor's examination and findings. But they did not know what to do. They could not talk to accused-appellant as he was always drunk and they were afraid of him.[27]

On April 30, 1997, a despedida was held for Angelina's sister Loida Kellow, who was leaving for the United States. On that occasion, Regail told her aunt about Aira's and Kimberly's ordeal. Angelina was brought in. They also called Mary Joy who, after drinking beer, began to tell everything. Mary Grace and Regail were summoned, and eventually they pieced together accused-appellant's pattern of abuse. They decided to file a case against him.

Early the next morning, Angelina and Loida went to the police station to make a report. They then went back to the house, fetched the children, and brought them to Dr. Lydia Buyboy for medical examination. However, Dr. Buyboy refused to examine the children. They next went to the Mabalacat District Hospital. Meeting the same rejection, they went to the Department of Social Welfare and Development (DSWD), where they obtained the assistance of a certain Mrs. Dimabuyu. They proceeded to the Ospital ng Angeles where, with Mrs. Dimabuyu's help, they were able to prevail on Dr. Edwin Manson to conduct a physical examination of Aira, Kimberly, and Mary Joy. However, Dr. Manson told them that "Sige, titingnan ko sila pero walang magandang resulta akong maibibigay sa inyo." [28]

After the examination, they went home. Accused-appellant was no longer there. They gathered their things and, with their relatives, checked in at the Monte Carlo Hotel in Dau, Mabalacat. There were over 40 of them. They went back to the Mabalacat Police Station and gave their statements. [29]

They stayed at the Monte Carlo Hotel for over four days. When they returned home, accused-appellant had not returned.

On May 9, 1997, at Loida's prompting, they went to the National Bureau of Investigation (NBI) for another physical examination. NBI medico-legal officer Dr. Dominic Aguda reported the following findings on Aira Velasquez:

GENERAL PHYSICAL EXAMINATION: (Aira Velasquez)

Height: 82 cms. Weight: _____

Fairly nourished/developed, conscious, coherent, ambulatory subject

Breasts - underdeveloped, immature

No extragenital physical injury noted on the subject.

GENITAL EXAMINATION:

Pubic hair - absent; Labia majora and minora, underdeveloped, coaptated; Hymennal opening - barely admits the tip of the small finger

Hymen - short, thin, with old healed incomplete lacerations at 11 and 5 o'clock position, corresponding to the walls of a clock; Fourchette-classically V-shaped.

CONCLUSIONS:

- No evidence of extragenital findings noted on the subject at the time of examination.

- Genital findings compatible with penetration of an object, on or about the alleged date of commission. [30]

On the other hand, Mary Joy Ocampo's medical examination yielded the following results:

GENERAL PHYSICAL EXAMINATION: (Mary Joy Ocampo)

Height: 4'10 Weight: 90 lbs.

Well developed/nourished, conscious, coherent, ambulatory subject

Breasts, developed, hemispherical, doughy, areolae, light brown, 2.0 cms. in diameter. Nipples, protruding, 0.9 cm. in diameter.

GENITAL EXAMINATION:

Pubic hair - thick, fully grown;

Labia majora and minora -coaptated, Fourchette, V-shaped, tense. Vestibular mucosa, pinkish. Hymen-short, thin, with old healed lacerated wound complete at 11, 6 o'clock; incomplete at 4, 9 o'clock position, corresponding to the face of a clock. Hymenal orifice - admits a tube, 2.0 cms. in diameter with slight resistance. Vaginal walls - moderately tight. Rugosities - deep

CONCLUSIONS:

- No extragenital physical injuries noted on the subject at the time of examination.
- The above described genital findings are compatible with sexual intercourse with man, on or about the alleged date of commission.[31]

The defense then presented the following evidence:

In 1965, accused-appellant worked as a photographer/laboratory technician in the Audio Visual American Company at Clark Air Field. In August 1967, as a result of a reduction of the labor force, he was forced to leave the company and thereafter worked as a jeepney driver until 1982 when he was reinstated.[32] In 1988, he was transferred to the Department of Defense Police, with the rank of major, earning P560.00 a day. He worked at Clark Air Field in January 1991.[33] At that time, he was living with Angelina. They earned a living as fish dealers while receiving financial help from relatives abroad.[34]

Accused-appellant remembered having met Angelina Dungca for the first time in the middle of 1984. Toward the end of that year, he started courting her, because he thought that her marriage was void as it had been performed by a barangay captain. It was only when he was already detained at the Angeles City Jail that he asked his brother to verify the legal status of Angelina Dungca's previous marriage.[35]

Accused-appellant denied the allegations against him.[36] He said there were always several people in their house at any time, and so it was impossible for him to have an opportunity to molest any of the complainants.[37]

Accused-appellant believed that Mary Joy had accused him because he always noticed whenever she came home late and scolded her.[38] As for Mary Grace Ocampo's complaint, accused-appellant claimed he was in fact the one who caught Kimberly playing with her organ and that he reported this to Kimberly's parents.[39] Accused-appellant believes that Regail filed the complaint against him because he had scolded her and punished her when she went out on a date with a married man, and again when she went out with her cousin after she had married Meryll Robertson.[40] As to Roan, accused-appellant claimed he never molested her.[41] Of his granddaughter Aira, accused-appellant said:[42]

COURT:

How about this Aira, the daughter of Regale Velasquez, did you take care of your granddaughter Aira?

A

Yes, sir. Si Aira ay nagpunta sa amin noong galing siya sa mga auntie niya sa Mabalacat at ang nanay niya sometimes in January dahil pakakasal nga siya sa Amerikano. Noong napunta sa amin si Aira, si Aira ay isang maldita at lumalaban ng bata. Madaldal ang batang iyan. Ano man ang gawin mo sa kanya marunong nang magsinungaling. Kunin niya o mo ang pera at tanungin mo kung sino ang kumuha ng pera, ang sasabihin niyan si Tatay. Paluin mo maski hindi ikaw ang kumuha ng pera, ang sasabihin si tatay. Paluin mo maski hindi ikaw ang pumalo sasabihin niyan si Tatay. Pero may insidenteng nangyari diyan noong nagdumi siya sa labas, wala siyang panty. Sabi ko, pumasok ka sa loob at mag-panty ka dahil maraming sasakyang dumadaan diyan.

Umasta siyang paganoon. Pinalo ko siya ng flies wiper (sic).

COURT:

That was the reason why she pointed to you?

A

Maari po. Hindi lang po iyon. Noong sinasawata kong lumalaban siyang paganoon, sabi ko pumasok ka't mag-panty, kinuha ko ang lighter. Sabi ko, susunugin ko iyan pekpek mo kako. Lumalaban pa at pinalo ko. Doon tumakbo siyang umiiyak.

Q And you did what you threatened?

A No, sir. Pinalo ko lang ng flies wiper (sic).

Q And Aira was then only less than two (2) years old?

A Opo. Madaldal na po iyan maski bata pa.

On April 30, 1997, during Loida Kellow's despedida, he was drinking with his friends when he developed a headache and decided to sleep. At around 10 o'clock in the evening, he was awakened by his son Renel who gave him glass of bitter liquid to drink. The drink contained sleeping pills.[43] After taking one sip, he set it aside. When he woke up the next morning, he looked for his family, but they were not around. He got home at 8 o'clock in the evening, but there was still no sign of them.[44]

The following day, he went to Manila. He pawned his watch and ring and bought a ticket on the Super Ferry 10. At 9 o'clock that evening, he sailed for Cebu and stayed with his eldest son, Rolando Velasquez.[45]

Three weeks later, he learned of the cases filed against him from the newspapers and television. However, because he had no job and no money, he was unable to return to Pampanga to clear his name. He was found in Cebu and arrested in July.[46]

Accused-appellant's younger brother, Adelaido Velasquez, a teacher by profession, testified that accused-appellant Lamberto Velasquez is a man of good repute and moral character. They respect and obey him.[47]

Sonia Velasquez, a younger sister of accused-appellant, described the latter as a brave and strict man with a loud voice. She also testified that he is a karate instructor, and could hurt another by merely holding him. According to her, Angelina Dungca had disclosed to her and to Adelaido accused-appellant's abuses, but she never got around to confronting him.[48]

Rochelle, accused-appellant's daughter by his first wife, also described her father as a disciplinarian. She testified that while her father was still married to her mother Caridad, he divided his time between her mother and Dolores. When Dolores died, her father lived with Angelina Dungca but occasionally visited her mother Caridad.

She said that her sister Regail had told her what accused-appellant had done to Aira. Her brother Ranold Velasquez and sister-in-law Mary Grace Velasquez also told her that Kimberly had been molested by their father. Angelina and Loida then suggested that their father should be killed. As her brothers Ranold, Renel, and Roberto did not agree, Angelina and Loida decided to leave the house and escape from Lamberto Velasquez. [49]

Renato Cruz, Rochelle's husband, testified that, from the window in their house, he saw accused-appellant being given a drink containing a sleeping pill. He also testified that Loida and Angelina wanted accused-appellant's children to cover their father's mouth with a pillow while he was asleep, but they did not have the courage to do

so.[50]

Roberto Velasquez, another son of Lamberto Velasquez, also testified for his father, saying that her aunt Loida ordered his brothers to kill their father but Renel did not agree and suggested instead to give him sleeping tablets.[51]

Mario Manarang, a barangay councilman of Dau, Mabalacat, Pampanga and a long-time friend and neighbor of Lamberto Velasquez, testified that he used to play cards and mahjong almost everyday after lunch with the Velasquez family. He admitted having asked Angelina Velasquez to have the cases dismissed and to settle things peacefully, but the latter refused. He was not familiar with the former women in accused-appellant's life, only with Angelina, and admitted that, though he gambled with accused-appellant almost everyday, he was not very familiar with his friend's family life.[52]

On April 14, 1998, the trial court rendered a decision,[53] the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

- In Criminal Case No. 97-310, for insufficiency of evidence, the accused is hereby ACQUITTED of the crime charged in the Complaint;
- Criminal Cases No. 97-308 and Criminal Case No. 97-309 are hereby DISMISSED for lack of jurisdiction;
- In Criminal Case No. 97-307, the accused is found GUILTY beyond reasonable doubt of the crime of Acts of Lasciviousness and is hereby sentenced to suffer imprisonment ranging from twelve (12) years and one (1) day of reclusion temporal minimum as minimum to seventeen (17) years of reclusion temporal medium as maximum;
- In Criminal Case No. 97-311, the accused is found GUILTY beyond reasonable doubt of the crime of Incestuous Rape and is hereby sentenced to suffer the supreme penalty of DEATH.

Accused Lamberto Velasquez is further ordered to indemnify the victim Mary Joy Ocampo in Criminal Case No. 97-311 the sum of P50,000.00 and Aira Velasquez in Criminal Case No. 97-307 the sum of P30,000.00.

For review in these proceedings, therefore, is the trial court's decision in Criminal Case No. 97-307 for acts of lasciviousness against accused-appellant's granddaughter Aira Velasquez, and in Criminal Case No. 97-811 for rape against his stepdaughter Mary Joy Ocampo. Accused-appellant assigns the following errors as having been committed by the trial court:

- The trial court erred in denying the accused of his right to preliminary investigation.
- The trial court erred in admitting the testimony of Regail Velasquez even if it is hearsay evidence and polluted testimony.
- The trial court erred in holding there was rape on October, 1994 and erred in giving credibility to Mary Joy Ocampo's testimony despite her unbeli[e]vable and inconsistent testimonies.
- The trial court erred in not giving credence to the testimonies of Lamberto Velasquez, Adelaido Velasquez, Sonia Velasquez, Mario Manarang, Roselle Velasquez-Cruz, Renato Cruz and Roberto Velasquez.

First. Accused-appellant's claim that he was deprived of the right to a preliminary investigation deserves scant consideration. As the Solicitor General points out in his brief for the appellee:

It is an established jurisprudence that the issue of lack of or a defective preliminary investigation should be raised before or during trial and such statutory right to a preliminary investigation is deemed waived when appellant, as in this case, failed to claim it before plea (People vs. Paras, 56 SCRA 248).

Moreover, in appellant's arguments, it is unclear whether this alleged motion for preliminary investigation which was denied by the trial court was anchored on the lack of it or merely a defect thereon or a mere motion for reinvestigation. When it does not appear from the record that a preliminary investigation was not granted the accused, it must be presumed that the proceedings in the trial court were in accordance with law. So that where no objection has been made at the trial, appellant must be taken to have waived his right to a preliminary investigation if in fact he was not given the benefit thereof. Failing to raise the issue of lack of preliminary investigation during the trial, appellant is now estopped to raise this issue (for) the first time on appeal. At any rate, absence of preliminary investigation merely affects the regularity of the proceedings but does not affect the trial court's jurisdiction or impair the validity of the information.[54]

Indeed, under Rule 112, §7(3) of the Revised Rules of Criminal Procedure, requests for preliminary investigation must be made to the trial court within five days from the time the accused learns of the filing of complaint or information. Here, the complaints against accused-appellant were filed in the Regional Trial Court of Angeles on May 22, 1997.[55] By his own admission, accused-appellant learned of the filing thereof shortly thereafter, when he heard of the same on television and read it in the newspapers in Cebu City. Yet, he did not ask for preliminary investigation until September 3, 1997. The trial court, therefore, correctly denied his motion, thus:

[I]t appearing that the accused was indeed aware of the filing of the charges against him several months ago before the Office of the City Prosecutor and that instead of participating in the said preliminary investigation, he went into hiding and [was] arrested only recently after the cases were filed against him several months ago, the accused's motion for reinvestigation and to defer arraignment was denied in open court.

Upon being arraigned, the accused assisted by his counsel pleaded NOT GUILTY to all the charges filed against him.[56]

The case of *People v. Rolito Go*,[57] which accused-appellant invokes, is different because there the accused asked the public prosecutor's office for preliminary investigation on the same day the information for murder was filed in the trial court. In contrast, accused-appellant Lamberto Velasquez waited until he was arrested and brought to court before invoking his right to a preliminary investigation. He is obviously late in invoking his right. The presumption is that an investigation had been held but accused-appellant could not be found. Failing to invoke his right to a preliminary investigation during the trial, accused-appellant is deemed to have waived the same.

Second. The trial court based its conviction of accused-appellant for acts of lasciviousness against Aira Velasquez on the testimony of Regail Velasquez, Aira's mother, who testified on what her daughter had told her. Aira herself was not presented in court, being a mere child of two and a half years old.

To appreciate Regail's testimony, the relevant portion of the same should be quoted:

Q In the month of April 1997 at about 3:00 o'clock in the afternoon, do you recall where were you?

A Opo.

Q Where were you then on that time and day?

A Nasa kuwarta po ako nagtutupi ako ng sinampay.

Q

While you were doing all those things, do you recall of any unusual incident that came into your personal knowledge?

A

Opo. Umakyat po sa kuwarto si Aira. Umiiyak po siya na nagsasabi siya sa akin na inaano po siya ng tatay ko, minomolestiya.

Q What exactly did you notice when Aira went up to your room and reported this matter to you?

A

Sinabi niya sa akin kung paano inaano ng tatay ko. Binukaka niya iyong isa niyang paa tapos inaano ang daliri sa ari niya.

Q What do you mean by inaano?

A Tinutusok ang daliri.

(Witness demonstrating how it was done by exactly opening her right foot and her finger pointing to her vagina and doing to and fro movement)

PROS. PORNILLOS:

You mean to tell us, she demonstrated how the act was done?

A Yes, sir.

Q Will you please stand up and demonstrate how Aira demonstrated what was done to her?

A Ganoon nga po.

(Witness demonstrating by raising her right foot with the right finger pointing to her sex organ doing to and from movement towards her vagina)

Q Did you come to know from her who was doing that?

A Opo.

Q What did you receive from Aira was the one who was doing that?

A Tatay ko daw po. Ang tawag niya sa tatay ko ay tatang.

....

Q Who is this Tatay or Tatang you are referring to?

Siya po, si Lamberto Velasquez.

(Witness pointing to Lamberto Velasquez)

COURT:

When was that when your daughter came to you?

WITNESS:

April po iyon. April 16, 3:00 o'clock in the afternoon.

COURT:

How old was Aira then?

WITNESS:

2 years old and 4 months, po.

Q 2 years old and 4 months?

A Opo.

Q She went to you crying?

A Opo.

Q What were the exact word uttered by that Aira?

A

Mama, Mama sabi niya tapos umiiyak po siya, tapos sabi ko, "ninano ka"? "I-tatang, i-tatang. Bakit ninanu na kang tatang" sabi ko.

Q She was crying with tears flowing from her eyes?

A Opo.

Q When she uttered, "Mama" what did you say?

A Ninanu ka. (What happened to you)

Q What did Aira tell you?

A Si Tatang kakayan na ku pu.

INTERPRETER:

Tatang is doing something on me.

COURT:

Then what happened next?

WITNESS:

Tinanong ko siya kung ano ang ginawa sa kanya, Binukaka ang paa.

(Witness demonstrating that she slightly opened her foot and her finger pointing to her vagina making to and fro movement)

COURT:

Then what happened next?

WITNESS:

Sinabi ko sa kanya baka niloloko ka lang, tapos umiiyak po siya.

COURT:

She was crying?

WITNESS:

Iyon nga po. Inaano daw po ng tatay ko, masakit daw ang ari niya.

Q What is the exact word?

A Masakit ang pek-pek ko. (My vagina hurts)

Q Then what did you do next?

A Hindi ko gaanong pinansin dahil baka binibiro lang siya ng tatay ko.

PROS. PORNILLOS:

After that you said you did not mind the same because you said he was just joked upon or teased. After that April 16, 1997, what did you find out next?

WITNESS:

Noong sumunod na iyon, araw-araw ko siyang pinapaliguan dumadaing po siya, masakit daw ang kanyang ari, tapos tinanong ko siya kung bakit dahil wala naman akong alam na dahilan na ikakasakit ng ari niya. Iyon nga po laging sinasabi sa akin na inaano daw ng tatay ko.

COURT:

Ano ang eksaktong salita ng bata.

WITNESS:

Sabi niya. I-tatang kasi, kinayi ne pu ing pekpek ku kaya masakit ya.

WITNESS (Interpretation)

(Tatang is doing something on me on my vagina)

COURT:

Did you ask her what her tatang did to her vagina?

WITNESS:

Opo. Ganoon din po dinemonstrate kung paano.

Q The answer, she will demonstrate?

A Opo.

Q How?

A Binuka iyong isang paa. Ginanon o.

(Witness demonstrating how it was done by slightly opening her right foot or raising her foot and by using her right finger pointing to her vagina with a to and fro movement)

Q What did you notice on the vagina of your daughter?

A My lumalabas na "nana."

Q Did you inspect the vagina?

A Opo. Pulang-pula tapos may lumalabas na "nana" sa vagina.

Q When you notice this "nana" on the vagina of your daughter, what action did you take, if any?

A

Nilalagat po siya noon, tapos dinala ko siya sa doctor Pinatignan ko po siya. Dinala ko kay Dra. Lydia Buyboy Sa private doctor, po.

Q What happened at the clinic of Dra. Buyboy?

A

Sinabi niya na may laceration iyong ari ng anak ko tapos may impeksiyon po siya.[58]

As the Solicitor General contends, Aira's acts and statements constitute exceptions to the hearsay rule because they were part of the *res gestae*. The inculpatory and spontaneous statements were: (1) "Si Tatang kakayan na ku pu." ("Tatang (accused-appellant) has been doing something to me.") (2) "I-tatang kasi, kinayi ne pu ing pekpek ku kaya masakit ya." ("Because Tatang has been doing something to my private part, that is why it hurts.") (3) She showed her mother her private part, which was swollen and oozing with pus, and then she gestured, by slightly opening or raising her right foot and using her right finger, to show what accused-appellant had done to it.

In *People v. Cloud*,^[59] Josephine Aguilar was at the emergency room of a hospital to have some stitches removed from her daughter's head when she saw a boy being carried by a man, followed by an old woman who was shouting hysterically. The boy's face was swollen and bruised and his body covered with dry blood. The old woman, apparently the boy's grandmother, cried and repeatedly screamed, "Pinatay siya ng sariling ama!" ("He was killed by his own father.") The old woman told the people inside the emergency room that the boy's father had beaten him up, tied his hands, and stabbed him. On the question of the admissibility of Mrs. Aguilar's testimony, this Court ruled:

Insofar as the statements of Rufina Alconyes are concerned, they are admissible as part of the *res gestae*, they having been caused by and did result from the startling, if not gruesome, occurrence that she witnessed; and these were shortly thereafter uttered by her with spontaneity, without prior opportunity to contrive the same. The report made thereof by Josephine Aguilar is not hearsay since she was actually there and personally heard the statements of Alconyes which she recounted in court. Her account of said statements of Alconyes are admissible under the doctrine of independently relevant statements, with respect to the tenor and not the truth thereof, since independent of the truth or falsity of the same they are relevant to the issue on the cause of the death of the victim.^[60]

We hold, therefore, that Aira's statements and acts constitute *res gestae*, as it was made immediately subsequent to a startling occurrence, uttered shortly thereafter by her with spontaneity, without prior opportunity to contrive the same. Regail's account of Aira's words and, more importantly, Aira's gestures, constitutes independently relevant statements distinct from hearsay and admissible not as to the veracity thereof but to the fact that they had been thus uttered.

Under the doctrine of independently relevant statements, regardless of their truth or falsity, the fact that such statements have been made is relevant. The hearsay rule does not apply, and the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact.^[61]

Accused-appellant seeks to discredit the testimony of Regail Velasquez by attempting to prove that she is a woman of loose morals. We fail to see, however, how proof of her past relationships with other men can have any bearing on her credibility as a witness in her daughter's trial. As the trial court reminded accused-appellant's counsel, the witness is not the accused in this case.^[62]

Regail's testimony is buttressed by Dr. Aguda's testimony and medico-legal report. While he admitted that the pus in the vagina could be caused by an infection, bad hygiene, or improper urination, he also said the infection could have been caused by the insertion of the finger. Dr. Aguda testified:

WITNESS:

I am referring to the findings of the hymen. Since an examination of the hymen, it was found out that there is an incomplete laceration at 11 o'clock and 5 o'clock position. Meaning that there was an object that forcefully entered into the hymenal opening causing the incomplete laceration.

Q: Like what?

A: Finger but not erected penis.[63]

Accused-appellant also questions the fact that when Aira was examined on May 9, 1997, Dr. Aguda discovered an old healed laceration, which usually indicates that the injury was inflicted more than one month prior to the examination, whereas the date of the alleged molestation was on April 16, 1997, one week short of a month.

This discrepancy was already explained by Dr. Aguda to the satisfaction of the trial court. According to the doctor, the medical classifications and periods were based on adult cases, whereas Aira was a little child with a very small hymen, and the laceration was very superficial. Understandably, then, the results varied slightly. [64]

The Court is not unaware of the caution to be observed when circumstantial evidence is to be considered as inculpatory indicia in a criminal prosecution. That is why it has spent an unusual amount of time and effort to reflect upon all the circumstances which the lower court accepted as an unbroken chain of events, reinforced by corroboration and yielding a conclusion of guilt, all consonant with the requisites therefor.[65]

But, in this case, the chain of facts cannot but produce an inference consistent with guilt and not with innocence. It is highly unlikely that a child of Aira's age would be able to concoct such a depraved tale and compliment it with such disturbing gestures with only the fantastic intention of implicating her grandfather.

To sum up, the following circumstances establish accused-appellant's guilt: Regail's account of her daughter's words and actions, her personal knowledge of the pus discharged from her daughter's vagina and the NBI medico-legal report confirming it, and accused-appellant's bare denials, compounded with his unexplained flight to Cebu, bringing little more with him than the clothes on his back.[66] Taken together, these are sufficient to convince us of the truth of the allegations against accused-appellant.

The rule is settled that we give due deference to the observations of trial courts on questions of credibility of witnesses since they have a better opportunity for observation than appellate courts. For this reason, the trial court's evaluation of testimonial evidence is accorded great respect.[67] Aira is a two-year old child. The penalty imposable for acts of lasciviousness against children under 12 years of age should be that provided by R.A. 7610, which is reclusion temporal in its medium period. Accused-appellant is Aira's grandfather. His relationship to his victim aggravates the crime, and, as provided by R.A. 7610, Section 31, the penalty "shall be imposed in the maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity." Hence, the maximum period of reclusion temporal medium should be imposed. Applying the provisions of the Indeterminate Sentence Law, the minimum of the penalty to be imposed should be reclusion temporal minimum.[68]

In Criminal Case No. 97-307, the trial court sentenced accused-appellant to suffer a prison term ranging from 12 years and 1 day of reclusion temporal minimum, as minimum, to 17 years of reclusion temporal medium, as maximum, and to indemnify complainant Aira Velasquez in the amount of P30,000.00. This is correct, and we, therefore, affirm it.

Third. The trial court convicted accused-appellant for the rape of Mary Joy Ocampo based on her testimony and the physical evidence presented. Indeed, the accused may be convicted solely on the basis of the testimony of the rape victim, if such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. We adhere to this principle in the case at bar.

Accused-appellant questions the credibility of Mary Joy Ocampo because of a three-year delay in reporting the alleged rape.

Delay in reporting an incident of rape is not necessarily an indication that the charge is fabricated.[69] In these cases, the delay was caused by fear. It is apparent from the testimony of witnesses, both of the prosecution and of the defense, that accused-appellant was a man to be feared. He brooked no disobedience even from his own brothers and sisters and was so feared that, even when his life and his freedom were gravely threatened, nobody, not even his own brother, was willing to wake him and confront him with the accusations. His wife, his children, and close relatives fled their home and lived in a hotel for four days to escape his ire.

Physically, he was intimidating. He is a black belter in karate and, according to his own sister's testimony, he could hurt a person merely by holding his hand. In fact, accused-appellant threatened Mary Joy with harm if she told anyone what accused-appellant had done to her.[70] It is, therefore, easy to see why Mary Joy kept her silence.

Accused-appellant contends that there were several inconsistencies in the testimony of Mary Joy Ocampo. As the trial court said, however:

Similarly, Mary Joy's alleged inconsistent testimonies as to whether or not she knew Jesus "Tootsie Mendoza" or "Robertson" is inconsequential. At any rate, Mary Joy clarified these points:

- If this "Robertson" is a family name, she knew (him) as the person who will marry her sister (p. 41, tsn, December 31, 1997).
- As to Jesus Mendoza alias Tootsie, Mary Joy claims that she does not know Jesus Mendoza although her mother declared that Mary Joy knew "Tootsie Mendoza." It is apparent that Mary Joy knew of a Tootsie Mendoza, but not a "Jesus Mendoza."

So, also, Mary Joy's alleged inconsistent testimony as to whether her mother was in the market or asleep in the house when she was raped is readily explicable or reconcilable. Mary Joy testified that the first time Lamberto inserted his finger on her sexual organ, her mother was in the market and when appellant finally succeeded in inserting his sexual organ into Mary Joy's, nobody was at home except her other brothers who were asleep. Evidently, in both instances, Mary Joy's mother was not in the house.[71]

Inconsistencies on minor or inconsequential matters do not impair the essential integrity of the prosecution's evidence as a whole, nor detract from the witnesses' testimony. On the contrary, they strengthen rather than weaken the credibility of the prosecution witnesses because they erase the suspicion of a rehearsed testimony.[72] A rape victim cannot be expected to keep an accurate account of her traumatic experience. Discrepancies could be caused by the natural fickleness of human memory.[73]

Mary Joy's testimony is corroborated by medical findings of hymenal lacerations, which the trial court found meritorious. Dr. Aguda testified on cross examination:

ATTY. CLEMENTE:

You mentioned about this conclusion that the above description genital findings were compatible on sexual intercourse with a man on or about the alleged date of commission. When you said date of commission when was that?

A

As I stated earlier, the types of laceration were old and healed and it [is] possible that those laceration[s] were made on the victim at the time of the commission of the crime. As relayed to me it started on October 1994 up

to April 1997, it is possible.

Q

You mentioned that the described findings were possible with sexual intercourse with a man and you confirmed to this Honorable court that the most logical object that entered the female organ of Mary Jane was the penis of a man?

A Yes an erected penis, sir.

Q

In degree of compatibility, how much percent sure that it is an erected penis that entered the female organ of Mary Joy?

A

80%, sir.

....

Q So the most probable is male organ?

A Yes, sir.[74]

On the other hand, accused-appellant merely makes a bare denial of the charges against him. Yet, despite the fact that he had no money and no extra clothes to bring with him for a long trip, he hastily left for Cebu City. His only excuse was that "masama ang loob ko"[75] and that he feared for his life. He did not, however, report the alleged attempt on his life, nor did he surrender himself to the Cebu authorities when he learned of the cases filed against him.

Accused-appellant said that there was always a large number of people in their house, such that he would have had no opportunity to commit the crimes charged against him.

Rape has been known to be committed in places ordinarily considered as unlikely. The scene of the rape is not always nor necessarily isolated or secluded. It can be committed in places where people congregate, in parks, along the roadside, within school premises, inside an occupied house, and even in a room where other members of the family are sleeping. Among couples with big families who live in cramped quarters, the presence of other members of the family is not necessarily a deterrent to the commission of this crime.[76] In this case, it is not impossible for the rape to have taken place inside a small room with five occupants therein, including accused-appellant and Mary Joy.

Nor is there merit in accused-appellant's claim that Angelina instigated their children to file these cases so she can be free to marry an American. As we have observed, it is unnatural for a parent, especially a mother, to use her offspring as an engine of malice and expose her daughters to the pity attached to rape victims simply for a stab at a better life.[77] Besides, accused-appellant's children are already grown up, and Regail is not even Angelina's daughter. At the time of the trial, Regail was 28, Mary Joy was 17, and Mary Grace, who testified on Aira's behalf and admitted she too had been molested as a child, was 20, lived in another house, and had a family of her own. It is inconceivable that they would concoct a story of defloration and expose either themselves or their daughters to public trial unless they were motivated by the desire to have the culprit apprehended and punished.[78]

Fourth. The penalty imposed by the trial court on accused-appellant in Criminal Case No. 97-311 must be modified. Art. 335 of the Revised Penal Code, as amended by §11 of R.A. 7659, provides in pertinent part:

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

- 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.

The concurrence of the minority of the victim and her relationship to the offender being a special qualifying circumstance, which increases the penalty (distinguished from a generic aggravating circumstance which only affects the period of the penalty), should be alleged in the information, consistent with the constitutional right of the accused to be informed of the nature and cause of the accusation against him.

In *People v. Manggasin*,^[79] the information charged the accused with the rape of his stepdaughter but the evidence showed that the accused and the complainant's mother were not married but had merely been living in common-law relationship. The accused was convicted of simple rape only. Thus, although a common-law husband is subject to punishment by death in case he commits rape against his wife's daughter, nevertheless the death penalty cannot be imposed on accused-appellant in this case because the relationship alleged in the information in Criminal Case No. 97-311 against him is different from that actually proven. Accordingly, accused-appellant must be held liable only for simple rape and sentenced to reclusion perpetua as the proper penalty.

In this case, the information in the Criminal Case No. 97-311 alleged that accused-appellant, who is the stepfather of the complainant, succeeded in having carnal knowledge of the latter, who was then 13 years old. However, while it appears that accused-appellant married Angelina Dungca on November 8, 1989 (Exh. F), the Court has serious doubts about the validity of their marriage, considering that Angelina's previous marriage to Roberto Ocampo, the father of Mary Joy Ocampo, was still subsisting at that time. In fact, Mary Joy admitted that her father Roberto Ocampo was still alive when her mother contracted her second marriage.

As to the civil liability of accused-appellant, the Court finds that the award of P50,000.00 for civil indemnity is in order. In addition, however, he should be ordered to pay P50,000.00 as moral damages which requires no proof because it is assumed that the victim has suffered moral injuries entitling her to such an award.^[80]

WHEREFORE, in Criminal Case No. 97-307, the decision of the Regional Trial Court, Branch 59, Angeles City, finding accused-appellant Lamberto Velasquez guilty of acts of lasciviousness and sentencing him to suffer the penalty of imprisonment ranging from 12 years and 1 day of reclusion temporal minimum, as minimum, to 17 years of reclusion temporal medium, as maximum, and ordering him to indemnify Aira Velasquez in the sum of P30,000.000, is hereby AFFIRMED.

In Criminal Case No. 97-311, the decision of the same court finding accused-appellant Lamberto Velasquez guilty of rape and sentencing him to death is hereby MODIFIED. Accused-appellant Lamberto Velasquez is found guilty beyond reasonable doubt of simple rape and sentenced to reclusion perpetua and ordered to pay P50,000.00 in moral damages in addition to the amount of P50,000.00 as civil indemnity ordered by the trial court to be paid by him.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

- [1] Per Judge Eliezer R. De los Santos.
- [2] Rollo, p. 8.
- [3] Id., p. 6.
- [4] Records, p. 16.
- [5] Rollo, p. 27.
- [6] Records, p. 28.
- [7] Id., p. 75.
- [8] Also spelled "Roselle."
- [9] Also spelled "Reanel."
- [10] Also spelled "Ria" or "Rea."
- [11] TSN, pp. 3-6, Dec. 18, 1997.
- [12] TSN, p. 33, Jan. 13, 1998.
- [13] TSN, p. 9, Dec. 18, 1997.
- [14] Id., pp. 7-10.
- [15] TSN, p. 20, Oct. 31, 1997.
- [16] Id., p. 20.
- [17] TSN, p. 11, Oct. 10, 1997.
- [18] Id., pp. 16-22.
- [19] Id., pp. 22-25.
- [20] Id., pp. 26-29.
- [21] TSN, pp. 14-15, Oct. 29, 1997.
- [22] TSN, pp. 3-9, Nov. 11, 1997.
- [23] Id., pp. 8-9.
- [24] Id., p.9.
- [25] TSN, pp.17-19, Nov. 14, 1997.
- [26] TSN, p. 11, Nov. 11, 1997; TSN, p. 16, Nov. 14, 1997.
- [27] TSN, p. 13, Nov. 11, 1997.
- [28] TSN, pp. 22-23, Nov. 14, 1997.
- [29] Id., pp. 23-24.
- [30] Exh. C (Crim. Case No. 97-307).
- [31] Exh. C (Criminal Case Nos. 97-308, 309, 311).

[32] TSN, p. 5, Dec. 11, 1997.

[33] TSN, p. 11, Dec. 18, 1997.

[34] TSN, p. 17, Dec. 11, 1997.

[35] Id., pp. 23-27.

[36] Id., p. 34.

[37] Id., pp. 15-23.

[38] Id., p. 34.

[39] Id., pp. 33-35.

[40] Id., p. 36.

[41] Id., p. 37.

[42] Id., pp. 37-38.

[43] TSN, p. 52, Dec. 23, 1997.

[44] TSN, pp. 39-44, Dec. 11, 1997.

[45] Id., p. 45.

[46] Id., p. 46.

[47] TSN, pp. 1-13, Dec. 23, 1997.

[48] TSN, pp. 1-17, Jan. 8, 1998.

[49] TSN, pp. 22- 50, Jan. 13, 1998.

[50] Id., pp. 52- 68.

[51] Id., pp. 72-75.

[52] Id., pp. 2-18.

[53] Rollo, p. 20.

[54] Rollo, pp. 195-196.

[55] Records, pp. 1, 14, 28.

[56] Id., p. 75.

[57] 206 SCRA 138 (1992).

[58] TSN, pp. 7-9, Nov. 11, 1997.

[59] 265 SCRA 472 (1996).

[60] Id., p. 45.

[61] 31 C.J.S. 988 as cited in 7 V. FRANCISCO, THE REVISED RULES OF COURT IN THE PHILIPPINES, PART I, 518 (1997).

- [62] TSN, pp. 27-28, Nov. 11, 1997.
- [63] Id., p. 76.
- [64] Id., p. 92.
- [65] People v. Cloud, supra, citing, Rule 133, §4, of the Revised Rules on Evidence.
- [66] TSN, p. 51, Dec. 11, 1997.
- [67] People v. Lopez, 302 SCRA 669 (1999).
- [68] Rollo, p. 160.
- [69] People v. Casil, 241 SCRA 285 (1995).
- [70] Rollo, p. 53.
- [71][71] Records, pp. 197-200.
- [72] People v. Sancha, G. R. Nos. 131818-19, February 3, 2000.
- [73] People v. Joya, 227 SCRA 9 (1993).
- [74] TSN, pp. 86-87, Nov. 11, 1997.
- [75] Id., p. 46.
- [76] People v. Sancha, supra.
- [77] People v. Torejos, G. R. No. 132217, February 18, 2000.
- [78] People v. Sangil, Jr., 276 SCRA 532 (1997); People v. Sancha, supra.
- [79] 306 SCRA 228 (1999).**
- [80] People v. Prades, 293 SCRA 411 (1998).

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