PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINADOR GOMEZ Y CANAMO, ACCUSED-APPELLANT.

G.R. Nos. 132673-75. October 17, 2001

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PER CURIAM:

Before the Court for automatic review, conformably with Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. No. 7659,[1] is the joint decision dated January 26, 1998 of the Regional Trial Court of Malaybalay, Bukidnon, Branch 8, in Criminal Cases Nos. 8396-97, 8397-97, and 8398-97, finding accused-appellant Dominador Gomez y Canamo guilty of three (3) counts of rape and sentencing him to three (3) death penalties.[2]

In three separate informations, accused-appellant Dominador Gomez y Canamo was charged with three (3) counts of rape allegedly committed sometime in July 1996, on August 5, 1996, and on August 15, 1996, against his sixteen-year old daughter Myrna Gomez (hereinafter referred to as Myrna), which were docketed as Criminal Cases Nos. 8396-97, 8397-97, and 8398-97, respectively.

The informations were similarly worded, except as to the dates of the commission of the crime, as follows:

> "That sometime (on or about) ...., in the evening, at Sitio Mahayag, Barangay Husayan, Municipality of Kadingilan, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused prompted with lewd design, with the use of force and intimidation upon his daughter Myrna Gomez, a 16-year old girl, did then and there wilfully, unlawfully and criminally lie beside Myrna Gomez and then removed her panty, placed himself on top of her and had sexual intercourse with Myrna Gomez against her will, to the damage and prejudice of Myrna Gomez in such amount as may be allowed by law.
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> "Contrary to, and in violation of, Republic Act 7659.
>
> "Malaybalay, Bukidnon, March 25, 1997."[3]

On September 18, 1997, duly assisted by counsel, appellant Dominador Gomez entered a plea of not guilty in each of the three cases. Thereafter joint trial of the cases proceeded.

The trial court's summary of the evidence for the prosecution, is as follows:

> "Myrna Gomez was hardly 15 years old when she was allegedly raped by her father the first time in July, 1996. Her Certificate of Birth, marked Exhibit `C,' states she was born on December 20, 1980.
>
> "Myrna testified that at about midnight, sometime in the month of July 1996, while she was sleeping inside her room, she was awakened when she felt that somebody was lying by her side and taking off her panty. Myrna immediately recognized the person to be her own father by his smell and his voice. Besides, the room was not completely dark because of the light from the moon passing through the house walling that (sic) made of sliced bamboo. Wriggling and kicking as her father mounted her, Myrna pleaded, `Don't do it, pa.' Her resistance and her plea was (sic) useless. Her father successfully consummated his bestial sexual assault upon her. Myrna

could only cry after his father left the room, going back to his sleeping area at the sala of the house.

"At that time Myrna's mother was not home. She has been harvesting corn at barangay Mahayag and at a place called UST (for `Unahan sa Tulay,' literally, `Farther away from the bridge'). Myrna's room companion was her younger sister, but the latter did not notice the incident.

"Myrna further testified that she was raped the second time by her father on August 5, 1996, at about 10:00 o'clock in the evening, in the same room at their parents' house. The accused was even bolder this time because Myrna's mother was at home, sleeping at the sala with her husband, the accused. Before mounting Myrna, accused warned her not to resist or she will be mauled. And after consummating his carnal lust, he giggled and went out.

"Continuing her testimony, Myrna told the court that her father raped her again on August 15, 1996, at about 11:00 o'clock in the evening, in the same room. Despite her usual protest, accused had no compunction in inserting his penis into her vagina.

"Myrna did not have the courage to tell her mother about the horrible things her father did to her. The accused had warned her not to reveal anything or she will be mauled.

"But apparently, Myrna had confided her distress and anguish to her close friends.

"Thus, Myrna's aunt, Amalia M. Tania, testified that on January 29, 1997, while she was on her way to the market of Kadingilan, she happened to overhear a certain Michelle Legaspi talking to one Eugene Lapuz concerning Myrna. Michelle was quoting what Myrna said to her: `It's good you are not being molested by your father. As for me, my father has been molesting me. I am now pregnant.' Michelle is about the same age as Myrna and her neighbors. Tania was shocked but pretended not to have heard the conversation. When she returned home after her marketing, Tania reported what she had heard to her mother. She requested her to see Myrna's parents and verify if what she heard was true. Meanwhile, Tania: went back to the market looking for Eugene Lapuz. Finding Lapuz, Tania questioned her if what she heard was indeed correct. Lapuz confirmed the information she got from Michelle.

"Upon the return of Tania's mother from her visit to the parents of Myrna, she reported that the accused denied having raped his daughter. And even Myrna herself said she was not molested.

"Still convinced that Myrna was indeed impregnated by her own father, Tania, with her father and mother, went to the Barangay Captain for assistance on the following day. The Barangay Captain later reported back that his own inquiries came out negative. He was not able to get any information as to the person who may be responsible for Myrna's pregnancy. Tania was not to be pacified. Determined to go deeper into the matter, she and her parents sought the help of the police authorities. The following day February 1, the police picked up accused Dominador Gomez.

"At the police station, Myrna finally poured out all the sexual violations her father did to her.

"On April 2, 1997, Myrna Gomez gave birth to a child named Dave Gomez. The child birth (sic) was registered with the local Civil Registrar of Kadingilan as shown in Exhibit `A,' a Certificate of Live Birth. The poor child, however, died on May 6, 1997, as evidenced by a Certificate of Death, marked Exhibit `B'."[4]

Dominador Gomez, in his defense, denied all the accusations. His daughter Myrna was lying in court, he claimed. He suspected his brother-in-law to be interested in the prosecution because the latter did not agree to have the charges withdrawn. "I swear to God I did not do it," he told the court. He also told the court that possibly, the reason why his daughter filed these three counts of rape against him was that they were having a hard time in identifying the person responsible for her pregnancy.[5]

On January 26, 1998, the trial court found Dominador Gomez guilty of the crime of rape in each of the three cases and sentenced him as follows:

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> "WHEREFORE, this court finds accused Dominador Gomez y Canamo GUILTY beyond reasonable doubt of three (3) crimes of rape as charged. Pursuant to the provisions of Section 11 of Republic Act No. 7659, amending Article 335 of the Revised Penal Code, considering the victim is his own daughter below 18 years old at the time the offenses were committed, he is hereby sentenced to three (3) DEATH penalties. He is also ordered to indemnify his victim Myrna Gomez the sum of P50,000.00 for each of the offense, or a total of P150,000.00, and to pay the cost.
>
> "SO ORDERED."

In his brief, appellant claims that despite her alleged harrowing experience in the hands of her father, Myrna did not report the matter to the police for almost six months, i.e., from July 1996 to February 1997; that she did not also reveal anything to her mother, not even after her grandmother had confronted her mother and father about said incidents; and that she claimed she feared being manhandled by his father. According to appellant, private complainant Myrna had already received the worst kind of "manhandling", therefore, fear of reprisal could not have been the motivating factor for her silence. To appellant's mind, her long silence casts serious doubts on her credibility as a witness.

This Court is not persuaded.

The failure of the victim to immediately reveal his father's incestuous acts is not indicative of fabricated charges.[6]

> "Many victims of rape never complain or file criminal charges against their rapists. They prefer to bear the ignominy and pain rather than reveal their shame to the world or risk rapists making good their threats to kill or hurt their victims."

The victim herein is in no case different. Her shame and genuine fear of what appellant might do to her had temporarily sealed her lips. Only when she was assured of her safety because her father, who was her rapist, had already been picked up by the police did she reveal that her father, herein appellant, raped her. It is not uncommon for a girl at the tender age of 16 years to be intimidated into silence and conceal for sometime the violation of her honor, even by the mildest threat against her life.[7]Worse, in incestuous rape, that fear which compels non-revelation is further reinforced by the moral ascendancy of the rapist over his ravished relative. As the father of the victim, appellant had assumed parental authority over her during her formative years. Undisputedly, he exerts strong moral influence over her.

Appellant also argues that although the Birth Certificate of Myrna's child indicated appellant as the father, the entries therein were given by Myrna herself and is inconclusive as proof of the true paternity of her child. According to appellant, it does not also appear that Myrna was ever physically examined to establish the alleged sexual abuses; evidently, the State did not deem this necessary considering Myrna's pregnancy and delivery, but as it is, there is only Myrna's dubious testimony to rely on.

Appellant's argument boils down to the credibility of Myrna's testimony. The assessment of the credibility of witnesses is primarily the function of the trial court. Well-settled is the rule that this Court will not disturb the findings of the trial court as to the credibility of a witness. This is so because the trial court has a better vantage point in observing the candor and behavior of the witness. The fact that Myrna's testimony is uncorroborated is of no moment. An accused may be convicted on the basis of the lone uncorroborated testimony of the rape victim, provided that her testimony is clear, positive, convincing and otherwise consistent with human nature and the normal course of things.[8]The Court finds that Myrna's testimony meets these criteria.

Moreover, appellant failed to give a plausible reason why Myrna would fabricate a story of rape. As we have so held in the past, a young girl would not publicly disclose a humiliating and shameful experience of being sexually

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abused by her father if such were not the truth,[9] especially so in this case where there has been no showing of bad blood between father and daughter prior to the charges of rape. Her testimony is, therefore, entitled to full faith and credit.

This Court agrees with the trial court that appellant is guilty beyond reasonable doubt of three (3) counts of rape since the same are ably supported by the evidence. As the age of the victim and the relationship between the appellant and the victim have also been proven beyond reasonable doubt, the Court affirms the imposition of the death penalty in accordance with Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659 which pertinently provides:

> "x x x
>
> "The death penalty shall be imposed if the crime of rape is committed with any of the following attendant circumstances:
>
> "1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. x x x."

In line with prevailing jurisprudence, the civil indemnity for the victim shall be in the amount of P75,000.00 for each count of rape, since the commission of the crime of rape in each of these cases is effectively qualified by circumstances under which the death penalty may be imposed; and moral damages of P50,000.00 shall likewise be awarded for each count of rape without the need of pleading or proof of the basis thereof.[10] Exemplary damages of P25,000.00 in each case may also be awarded in line with current case law.

Four Justices of the Court maintain their position that R. A. No. 7659 is unconstitutional insofar as it prescribes the death penalty. Nevertheless they submit to the ruling of the majority that the law is constitutional and the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, premises considered, the Court hereby AFFIRMS the appealed decision in Criminal Cases Nos. 8396-97, 8397-97 and 8398-97 of the Regional Trial Court of Malaybalay, Bukidnon, Branch 8, finding the accused-appellant DOMINADOR GOMEZ Y CANAMO guilty beyond reasonable doubt of the crime of rape in each case and sentences him to suffer the death penalty in each case with the MODIFICATION that said accused-appellant is ordered to pay the victim Myrna Gomez, the amount of P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages, also in each case.

In accordance with Article 83 of the Revised Penal Code as amended by Section 25 of R.A. No. 7659, upon finality of this decision, let the records of these cases be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

Costs de oficio.

SO ORDERED.

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

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[1] Entitled An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Laws, and for Other Purposes. It took effect on 31 December

1993 (People vs. Simon, 234 SCRA 555 [1994]).

[2] Original Records, pp. 43-47; Rollo, pp. 43-47. Per Judge Vivencio P. Estrada.

[3] Original Records, pp. 1-3.

[4] RTC Decision, Rollo, pp. 44-46.

[5] TSN, Oct. 9, 1997, pp. 8-9.

[6] People vs. Silvano, 309 SCRA 363 [1999].

[7] People vs. Quinones, 245 SCRA 87 [1995].

[8] People vs. Alicante, 332 SCRA 440, 441 [2000].

[9] Ibid.

[10] People vs. Candelario and Legarda, 311 SCRA 475 [1999]; People vs. Alicante, 332 SCRA 440 [2000].

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