

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIXBERTO FRAGA Y BAYLON, ACCUSED-APPELLANT.

G.R. Nos. 134130-33. April 12, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

Before us for automatic review is the decision[1] of the Regional Trial Court, Branch 38, Daet, Camarines Norte, finding accused-appellant Felixberto Fraga y Baylon, alias Bentot, guilty beyond reasonable doubt of four counts of rape, two of which were committed against Lenny Macaro and another two committed against Lenny's sister Jenny Macaro, and sentencing him to suffer the penalty of death in each of the four cases and to indemnify the victims in the amount of P100,000.00 each.

Four informations for rape were filed against accused-appellant.

In Criminal Case No. 8899, the information alleged:

That on or about September 9, 1996 at 4:00 o'clock in the afternoon, at Sitio Naguit-in, Barangay Capacuan, Municipality of Paracale, Province of Camarines Norte, and within the jurisdiction of this Honorable Court, the above-named accused who is the step-father of the private offended party, by means of force, violence, and intimidation that is, by threatening the herein private complainant that she will be killed and subjected to bodily harm if she will not submit to his criminal design, did then and there, wilfully, unlawfully, and feloniously lie with and have carnal knowledge against the will and consent of the offended party, Lenny V. Macaro, who was then fourteen (14) years old, to her damage and prejudice.

CONTRARY TO LAW.

In Criminal Case No. 8900, it was alleged:

That on or about September 24, 1995 at 9:00 o'clock in the morning, at Sitio Naguit-in, Barangay Capacuan, Municipality of Paracale, Province of Camarines Norte, and within the jurisdiction of this Honorable Court, the above-named accused who is the step-father of the private offended party, by means of force, violence, and intimidation that is, by threatening the herein private complainant that she will be killed and subjected to bodily harm if she will not submit to his criminal design, did then and there, wilfully, unlawfully, and feloniously lie with and have carnal knowledge against the will and consent of the offended party, Lenny V. Macaro, who was then thirteen (13) years old, to her damage and prejudice.

CONTRARY TO LAW.

In Criminal Case No. 8945, the information charged:

That on September 27, 1996, at about 12:00 o'clock noon at Sitio Naguit-in, Barangay Capacuan, Municipality of Paracale, Province of Camarines Norte, and within the jurisdiction of this Honorable Court, the accused who was living together in the same house, and is the stepfather of the victim Jenny Macaro, a girl below twelve years old, by means of force and intimidation, with lewd design, did then and there wilfully, unlawfully, and feloniously have carnal knowledge of the said victim, against her will, to her damage.

CONTRARY TO LAW.

In Criminal Case No. 8946, the information averred:

That on September 29, 1996 at about 4:00 o'clock p.m. at Sitio Naguit-in, Barangay Capacuan, Municipality of Paracale, Province of Camarines Norte, and within the jurisdiction of this Honorable Court, the accused who was living together in the same house, and is the stepfather of the victim Jenny Macaro, a girl below twelve years old, by means of force and intimidation, with lewd design, did then and there wilfully, unlawfully, and feloniously have carnal knowledge of the said victim, against her will, to her damage.

CONTRARY TO LAW.

The cases were consolidated and jointly tried. Upon being arraigned, accused-appellant pleaded not guilty to the charges.

The prosecution presented evidence to the following effect:

Alex, Julie, and complainants Lenny and Jenny, all surnamed Macaro, are the children of Ambrocio and Emma Macaro. The family resided in Awitan, Daet, Camarines Norte. After the death of Ambrocio Macaro in 1987, Emma and her two daughters, Lenny, then five years old, and Jenny, then three years old, lived with Emma's mother in Sindikado, Barangay Culapnit, Paracale, Camarines Norte. There, Emma met accused-appellant, and the two thereafter lived as husband and wife. The couple stayed in accused-appellant's house in Capacuan, Paracale, Camarines Norte. Lenny and Jenny stayed with them. Emma later had three other children by accused-appellant, namely, Renerose, Benjie, and Renalyn.[2]

At about 9 a.m. of September 24, 1995, while Lenny, then 12 years old, was in the bedroom of their house, taking care of accused-appellant's month-old child Renalyn, accused-appellant arrived and closed the door behind him. At first, he played with his child, but after a while he started touching Lenny's nipples, causing the latter to nearly drop the child to the floor. Accused-appellant then took out a knife and, pointing it at Lenny, removed the latter's shorts and panties. Accused-appellant started kissing Lenny on different parts of her body while threatening to kill her if she resisted. While standing, he grabbed her by the waist and lifted her towards him and then inserted his middle finger into her vagina. Afterwards, he forced his penis into her vagina. Lenny writhed in pain as accused-appellant performed the sexual act. She begged the latter to stop, telling him "That's enough!", but accused-appellant finally stopped only after satisfying himself. Lenny noticed something coming out of his penis. She also saw blood on his organ as he wiped it. She noticed her vagina bleeding. Accused-appellant told her to take a bath. She did and then went to the house of her uncle, Kuya Bebec. But she did not tell her uncle her misfortune because of accused-appellant's threat.[3]

On September 9, 1996, Lenny was raped a second time by accused-appellant. She was alone in the house as her mother, had gone to Daet, while her younger sister Jenny was playing in a neighbor's house. At about 4 p.m., accused-appellant arrived and, finding Lenny alone, closed the door behind him. Through threat and intimidation, he made her lie down on the floor. He held her hand and started kissing her in different parts of her body. Lenny pleaded with accused-appellant not to carry out his designs, but the latter ignored her. He spread her legs, licked her private parts, placed himself on top of her, and succeeded in ravishing her once more. Lenny then saw him wiping his organ with his clothes before he put them on and left to gather firewood. As before, Lenny did not report the incident to anyone because of fear of accused-appellant. She went to Manila and applied for work as a househelp, but she returned home after a week.[4]

Jenny, Lenny's younger sister, was not spared from accused-appellant's designs. At 12 noon of September 27, 1996, accused-appellant entered the bedroom where Jenny was babysitting her half-sister Renalyn. Through force

and intimidation, accused-appellant was able to have sexual intercourse with Jenny. He gagged Jenny with a handkerchief, made her lie down, and threatened to kill her if she did not yield to his desire. Lenny arrived as accused-appellant was abusing her sister. She shouted, "Tama na po yan tiyo, batang-bata pa yan!" But accused-appellant did not stop. He threatened to kill Lenny, to which Lenny retorted "Tiyo, papatayin kita!" It was only after satisfying himself that accused-appellant finally stopped. Jenny said she saw a whitish substance coming out of accused-appellant's organ. Accused-appellant then slapped Lenny. He later put on his clothes and left. Jenny was bleeding in the vagina. Because of accused-appellant's threats to kill all of them, Lenny and Jenny did not report the incident to their mother.[5]

Finally, at about 4 p.m. of September 29, 1996, while Jenny was in the bedroom babysitting, accused-appellant arrived. Lenny was outside the house washing clothes. Earlier, their mother had left to sell peanuts and other cooked food. Taking advantage of the situation, accused-appellant forced Jenny to have sexual intercourse with him. Jenny did not report the matter to Lenny nor to her mother for fear that accused-appellant would carry out his threats to kill them.[6]

Lenny and Jenny could not keep their silence for long. They related to Rosalie Y. Macaro, wife of their brother Alex, that they had been raped by accused-appellant. Rosalie, therefore, sought police assistance. The sisters gave sworn statements (Exhs. A and D), on the basis of which complaints for rape (Exhs. B and F) were filed against accused-appellant before the Municipal Trial Court of Paracale, Camarines Norte.[7]

On October 18, 1996, Dr. Marcelito B. Abas, medico-legal officer of Regional Health Office No. 5 of the Camarines Norte Provincial Hospital in Daet, Camarines Norte, conducted medical examinations on Lenny and Jenny. His reports (Exhs. C and E) contained the following results:

NAME: LENNY V. MACARO AGE: 14 years

GENITAL EXAM:

= Superficial healed laceration at 5 and 8 o'clock

= Vagina admits one finger easily

= Vaginal orifice 1 cm. in diameter

NAME: JENNY V. MACARO AGE: [12] years

GENITAL EXAM:

= Superficial healed hymenal lacerations at 2, 3 and 7 o'clock;

= Vagina admits two (2) fingers easily;

= Vaginal orifice 1.5 cm. in diameter.

He explained that the superficial healed hymenal lacerations were caused by the penetration of a turgid penis.[8]

Sometime in November, 1996, Lenny and Jenny were taken to the Lingap Center for Children of the Department of Social Welfare and Development (DSWD). Social Welfare Officer II Corazon A. Pitero recommended that they undergo psycho-social rehabilitation, and she facilitated their transfer to the Center for Girls in Sorsogon[9] (Exhs. H and I).[10]

Accused-appellant denied the charges and interposed the defense of alibi. He claimed that Lenny lived in the house of her grandmother, Lita Villeno, at Sindikado, Barangay Culapnit, Paracale, Camarines Norte. The only time that Lenny stayed in his house at Capacuan was after she had been sent away by her employer in Manila

where she worked as a househelp for about a week. According to accused-appellant, sometime in August 24, 1996, he had an altercation with Alex Macaro, elder brother of Lenny and Jenny, during a town fiesta because he and his common-law wife sold hogs belonging to Alex's wife Rosalie without the latter's consent. As to the two alleged incidents of rape against Lenny, he claimed that at about 9 a.m. of September 24, 1995, Lenny was in her grandmother's house in Sindikado, while he was working in the mines together with his wife's brothers. On the other hand, at 4 p.m. of September 9, 1996, when the second incident of rape allegedly took place, accused-appellant claimed that Lenny was at the town of Malacbang. As to the two other alleged incidents of rape committed against Jenny, accused-appellant said that at about 12 noon of September 27, 1996, he was in the house of his parents-in-law in Barangay Culapnit, Tugos, Paracale, Camarines Norte, while at 4 p.m. of September 29, 1996, he was at home in Capacuan feeding his hogs, while Jenny was in school.[11]

Emma Macaro, mother of complainants Lenny and Jenny, testified in favor of the accused-appellant. She declared that Lenny and Jenny were born on November 21, 1982 and October 10, 1984, respectively. She corroborated accused-appellant's claim that Lenny was staying with the latter's grandmother from September 24, 1995 until July 27, 1996 and then lived with them in Capacuan up to August 1, 1996. She further stated that on the two occasions when Jenny was allegedly raped, the latter attended classes and arrived home only at around 5 p.m. She also corroborated accused-appellant's claim that the latter had an altercation with her son Alex. She maintained that the incidents of rapes could not have happened as she was always at home with her children.[12]

On January 5, 1998, the trial court rendered a decision finding accused-appellant guilty of four counts of rape. The dispositive portion of its decision reads:

WHEREFORE, finding the accused Felixberto Fraga guilty beyond reasonable doubt of rape as defined under Art. 335, Revised Penal Code as amended by R.A. No. 7659, he is hereby sentenced as follows:

- 1) In Criminal Case Nos. 8899, 8900, 8945 and 8946, he is hereby ordered to suffer the extreme penalty of death in each case;
- 2) To pay the offended party Lenny Macaro in Criminal Case Nos. 8899 and 8900 the amount of P100,000.00 as indemnity;
- 3) To pay the offended party Jenny Macaro in Criminal Case Nos. 8945 and 8946 the amount of P100,000.00 as indemnity.

SO ORDERED.

Accused-appellant seeks the reversal of his conviction alleging errors in the trial court's decision.

First. Accused-appellant avers that the evidence for the prosecution does not establish his guilt beyond reasonable doubt and that the trial court erred in finding him guilty of four counts of rape.

This contention will not bear analysis. Our review of complainants' testimonies supports the conclusion of the trial court that their testimonies deserve full faith and credence. As to the first incident of rape which happened at about 9 a.m. of September 24, 1995, Lenny testified:

FISCAL FERRER:

Q Now, when the accused ([has] already) removed his short pants and brief, and you were also half-naked below waist line, what did the accused do next to you?

A He kissed me, sir.

Q Where did the accused kiss you?

A In my body, sir.

Q Aside from kissing you, what did the accused do to you?

A He lifted me, sir.

Q Will you demonstrate before the Honorable Court how were you lifted by the accused?

A Yes, sir, he held me.

Q Up to what portion was he carrying you?

A As demonstrated by the witness, "He held me on my waist then he lifted me towards his body."

Q When you were lifted by the accused towards his body, you were facing the accused?

A Yes, sir.

Q When you were already in that position wherein the accused was lifting you, and you were facing him, what did the accused do to you when you were facing him?

A He inserted his finger into my vagina, sir.

Q What did you feel when he inserted his finger into your vagina?

A It was painful, sir.

Q Which finger of the accused was inserted into your vagina?

A The middle finger of his hand, left hand, sir.

Q After the accused inserted his finger into your vagina, and thereafter you suffered pain, what did the accused do next while you were in that position?

A He also inserted his penis, sir.

Q When the accused inserted his penis into your vagina, what did you feel?

Q While the penis of the accused was inside your vagina, was the accused embracing you while in that position, while you were being lifted by the accused?

A It was painful, sir.

Q What did you observe from the buttocks of the accused while he was embracing you, while his penis was inside your vagina, what did you observe?

A He was moving his buttocks, sir.

Q Towards what direction was he moving his buttocks?

A Towards me, sir.

Q For how long was the penis of the accused inside your vagina while his buttocks pushing inside you?

A Five minutes, sir.

Now, while the accused was pumping his penis inside your vagina, did you not complain?

A I complained, sir.

Q And what did you tell the accused?

A I said, "That's enough."

Q Did he stop when you said "That's enough!"

A He stopped and something came out of his penis, sir.

Q Did you like what your uncle was doing to you then when his penis was inside your vagina?

A No, sir.

Q You said that he stopped when something came out of his penis, is it not?

A Yes, sir.

Q And when the accused stopped, did the accused put you down?

A Yes, sir.

Q And when the accused put you down, what did you notice from your vagina?

A It was bleeding, sir.

Q What did you notice from the penis of the accused when he removed it from your vagina?

A It was erected, sir.

Q And what did he do with his penis after it was removed from your vagina?

A He wiped it, sir.

Q After wiping his penis, what did the accused tell you?

A He told me to take a bath, sir.

Q The accused after wiping his penis what did he do next?

A He put on his clothes, sir.[13]

Q You said a while ago that when the accused was abusing you, he was armed, is it not?

A Yes, sir.

Q What [weapon] was the accused carrying with him at the time he was abusing you?

A A knife, sir.

Q Was he holding the knife when he was abusing you?

A Yes, sir.[14]

As to the second incident of rape which took place at about 4 p.m. of September 9, 1996, Lenny declared:

FISCAL FERRER:

Q When your stepfather removed his short pants and brief, what did he do next?

A He caused me to lie down and he held my hands and spread it.

Q Where did the accused cause you to lie down?

A In the sala.

Q On the floor of the sala or on a bench of the sala?

A On the floor, sir.

Q And when the accused spread your hands and your legs, what did the accused do next to you?

A He licked my body.

Q Did the accused also lick your private organ?

ATTY. BARANDON:

Leading, Your Honor.

FISCAL FERRER:

Q Which part of your body did the accused lick?

A My entire body, sir.

Q Including your vagina?

A Yes, sir.

Q And after the accused had licked your entire body including your vagina, what did the accused do to you?

A He caused me to spread my legs.

Q Did you spread your legs as ordered by your stepfather?

A No, sir.

Q And when you refused to spread your legs, what did the accused do to your legs?

A He was the one who spread my legs apart and placed himself on top of me.

Q When the accused spread your legs and placed himself on top of you, what did the accused do next?

A He inserted his penis into my vagina.

Q Did the penis of the accused enter into your vagina?

A Yes, sir.

Q And what did you feel when the accused inserted his penis inside your vagina?

A It was painful.

Q And what did you do when the accused inserted his penis into your vagina?

A I was resisting, sir.[15]

As to the third incident of rape which happened at about 12 noon of September 27, 1996, Jenny testified:

FISCAL FERRER:

Q Where was Lenny Macaro then on September 27, 1996 at about 12:00 o'clock noontime when you were babysitting Renalyn inside the room of the house of Felixberto Fraga?

WITNESS:

A She was washing clothes.

Q You mean to say she was outside of the house washing clothes?

A Yes, sir.

Q And she was then busy washing clothes?

A Yes, sir.

Q While you were babysitting inside that room, what happened next?

A My tiyuhin Felixberto Fraga entered the room.

Q You mean to say the accused Felixberto Fraga entered the room while you were inside the room also babysitting your baby sister Renalyn?

A Yes, sir.

Q And when Felixberto Fraga entered the room where you were babysitting what happened next, if any?

A He undressed me.

Q And what was undressed from you?

A My short pants and my panty.

Q And after the accused had undressed you by removing your short pants and panty, what did he do to himself?

A He also undressed himself.

Q And what did he remove when he undressed himself?

A His shorts and his brief.

Q When both of you, the accused and you, were already half-naked below your waistline, what did the accused do to you?

A He inserted his penis into my vagina.

Q How did the accused insert his penis inside your vagina?

A As if he was pumping.

....

FISCAL FERRER:

Q You said that when the accused was on top of you, he was trying to insert his penis inside your vagina, is it not?

A Yes, sir.

Q Did the accused insert his penis inside your vagina?

A Yes, sir.

Q And what did you feel when the accused was able to insert his penis inside your vagina?

A It was painful.

Q While the penis of the accused was inside your vagina, what did you notice of his buttocks?

A As if a phlegm-like substance came out.

Q When the penis of the accused was inside your vagina, while he was on top of you, did you plead for mercy from your uncle?

ATTY. BARANDON:

That would be leading.

FISCAL FERRER:

That is allowed under the rules, Your Honor please. That is very clear. It is the rule that allows asking leading questions on witness like this.

ATTY. BARANDON:

That is, Your Honor, when the minor cannot express in her own language. We can observe that this is a very intelligent girl.

COURT:

Q What did you do when he was already on top of you and you felt pain, as you said?

WITNESS:

A I wiped it, your Honor.

Q Was there a conversation between you and the accused?

A None, Your Honor.

COURT:

Proceed.

FISCAL FERRER:

Q What did the accused do to you while he was still on top of you?

A He wiped his penis.

Q While the accused was still on top of you, what did you do with the accused?

COURT:

At this point the court now allows leading questions.

ATTY. BARANDON:

We wish to put on record that the girl cannot answer a simple question.

COURT:

Proceed.

FISCAL FERRER:

Q While the accused was on top of you, did you try to push him?

WITNESS:

A No, sir.

Q Why?

A Because he might kick me, sir.

Q While the accused was on top of you did you try to shout for help?

A No, sir.

Q Why did you not try to shout?

A Because my mouth was gagged.

Q Who gagged your mouth?

A Felixberto Fraga.

Q And what did Felixberto Fraga use in gagging your mouth?

A A handkerchief.

Q You mean to say that a handkerchief was placed inside your mouth by the accused while he was raping you?

A Yes, sir.

Q And it is for that reason that you were not able to shout for help?

A Yes, sir.

Q While the accused was on top of you, where was Lenny Macaro, your sister?

A She was washing clothes.

Q Did she enter the room while the accused was on top of you?

A Yes, sir.

Q You mean to say Lenny saw what the accused was doing to you?

A Yes, sir.

Q And what did Lenny tell your stepfather, the accused, when she saw him on top of you?

A She said "Tama na po yan Tiyo. Batang bata pa yan."

Q Did the accused stop when he heard what Lenny said to him "Tama na po yan Tiyo. Batang-bata pa yan"?

A He did not stop.

Q Why, what did the accused do when he did not stop when he was told by Lenny?

A He told Lenny not to interfere because he is going to kill her.

Q When the accused did not stop what did Lenny do next to your stepfather?

A She said "Tiyo, papatayin kita!"

Q And what did the accused do when he heard Lenny uttered "Tiyo, papatayin kita!"?

A He stopped.

Q And when the accused stopped, what did the accused do next?

A I was asked by my Ate Lenny to take a bath.

Q And you took a bath?

A Yes, sir.[16]

With regard to the last incident of rape at about 4 p.m. of September 29, 1996, Jenny said:

FISCAL FERRER:

Q On September 29, 1996 at around 4:00 o'clock in the afternoon, where were you?

A I was inside the room.

Q You mean to say the same room where you were at on September 27, 1996?

A Yes, sir.

Q And what were you doing in that room on Sept. 29, 1996 at around 4:00 o'clock in the afternoon?

A I was taking care of the baby.

Q Where was your elder sister Lenny then?

A She was washing clothes.

Q And while you were inside that room what happened, if any?

A My tiyuhin entered the room again.

Q And when your tiyo entered the room again, what did he do to you, if any?

A He undressed himself.

Q When you said he undressed himself, he removed his short pants and underwear?

A Yes, sir.

Q Did the accused also undress you?

A Yes, sir.

Q And what was removed from you by the accused?

A My short pants and panty.

Q And after the accused had removed your short pants and panty, what did the accused do to you?

A He inserted his penis into my vagina.

Q But before the accused inserted his penis into your vagina, do you know if he also inserted his finger?

A Yes, sir.

Q Which finger of the accused did he insert inside your vagina?

A His right forefinger.

Q How many fingers did he insert into your vagina?

A One, sir.

Q What did you feel when he inserted his forefinger into your vagina?

A It was painful.

Q You said that the accused inserted his penis into your vagina. Was the accused able to insert his penis into your vagina?

A Yes, sir.

Q Was the accused on top of you when he inserted his penis inside your vagina?

A Yes, sir.

Q Did you complain while [his] penis was inside your vagina?

A No, sir.

Q Why did you not complain?

A Because he ordered me not to complain.

Q And what did the accused tell you?

A That I should not report the matter.

Q And did you try to shout?

A No, sir.

Q Why?

A He told me not to shout because I will be killed.

Q And when you heard that, you became afraid, is it not?

A Yes, sir.[17]

The testimonies of child victims of rape are generally accorded full weight and credit. When a child victim says that she has been raped, she says in effect all that is necessary to show that rape was committed.[18] Indeed, in these cases, Lenny and Jenny had no motive to testify falsely that they had been raped by accused-appellant. As we have said in numerous cases, a young girl's revelation that she has been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give the details of her ignominy, cannot just be dismissed as a mere concoction.[19] Jenny's innocence revealed itself in her reference to the whitish substance she saw on her private parts and shorts as "sipon." She and Lenny were unshaken by the gruelling cross-examination to which they were subjected.

Indeed, it defies comprehension why the complainants would concoct a story of defloration and allow an examination on their private parts if they had base motives in charging accused-appellant with a heinous offense. Their courage is all the more commendable because their own mother testified in favor of accused-appellant. If their stories had been contrived, they would not have been so composed and consistent throughout their entire testimony in the face of intense and lengthy interrogation.[20] Their testimonies were corroborated by medical findings of hymenal lacerations.

In contrast, the bare denials of accused-appellant were unsubstantiated by any credible evidence. Denial is a negative, self-serving evidence which cannot be given greater weight than the testimony of credible witnesses

who testified on affirmative matters. Between the positive declarations of the prosecution witnesses and the negative statements of the accused, the former deserve more credence.[21]

Second. Accused-appellant contends that there were no rapes because the prosecution not only failed to establish that he employed force, violence and intimidation in having sexual intercourse with complainants Lenny and Jenny but that it also failed to prove beyond reasonable doubt that the sexual intercourse took place without their consent.

This contention is also without merit. Accused-appellant changed his theory, from denial and alibi to the absence of force and intimidation employed by him upon the complainants and the lack of resistance on their part, apparently after realizing the futility of his earlier defense.[22]

Moreover, this argument of accused-appellant has no bearing with regard to Jenny as she was under 12 years of age when the rapes against her were committed. When the victim is below 12 years of age, the consent, or lack of it, by the girl to have carnal embrace is irrelevant.[23]

In any case, complainants Lenny and Jenny categorically testified that accused-appellant succeeded in having carnal knowledge of them by force and intimidation. On the first occasion of rape, accused-appellant threatened Lenny with a knife and succeeded in making her submit to his will. As to the second incident of rape, Lenny fought to free herself from accused-appellant's hold, but the latter proved to be too strong for her. As to the third incident of rape, Jenny was gagged. As to the last occasion of rape, Jenny was rendered defenseless. The incidents happened when complainants' mother was away.

The test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. Where resistance would be futile, offering none at all does not amount to consent to the sexual assault.[24] It is not necessary that the victim should have resisted unto death or sustained physical injuries in the hands of the rapist. It is enough if the intercourse takes place against her will or if she yields because of genuine apprehension of harm to her if she did not do so.[25] Indeed, the law does not impose upon a rape victim the burden of proving resistance.[26] Slx

In these cases, accused-appellant started cohabiting with complainants' mother in 1987. As the common-law husband of their mother, he gained such moral ascendancy over complainants that any more resistance than had been shown by complainants cannot reasonably be expected.

Third. Accused-appellant contends that the reactions of Lenny after the alleged rape were unnatural for a woman who had just been the victim of sexual assault. Accused-appellant is referring to the fact that after the first incident, Lenny took a bath and proceeded to the house of her uncle (Kuya Bebec), while after the second incident, she dressed up and continued with the chore she was then doing, folding clothes. He further argues that if Lenny was really abused, then she should not have returned to his (accused-appellant's) house.

It was natural for Lenny to wash herself after she had been defiled. That after she had been abused she returned to her household work or otherwise conducted herself as though nothing untoward had happened to her was due to the overhanging threat on her life that if she reported the rape to others, she would be killed. Moreover, the fact that accused-appellant, who is the common-law husband of her mother and whom she addressed as "Tiyo," exercised moral ascendancy over her and her siblings explains why Lenny behaved as though no wrong had been done to her.

Lenny was also concerned with her younger sister Jenny who had earlier told her that accused-appellant had molested her. In her affidavit (Exh. A), Lenny stated: "Kaya po ako nagpa-Maynila sa dahilan na hindi ko na kaya ang ginagawa sa akin nitong aking tiyo at gusto kong magpakamatay sa dahilan na bago ako magpa-Maynila ay

nalaman ko na ang aking kapatid na bunso na si Jenny Macaro ay nagsumbong na rin sa akin na pinakikialaman ito ni Tiyo at pinaghihipo na raw ang puke niya at nakikiusap sa akin itong kapatid ko na huwag siyang iwanan at natatakot siya at sasama sa akin at ng malaman ito ni Tiyo ay hindi ito pinasasama sa akin kaya ako lang nakaluwas ng Maynila at muli po akong bumalik sa bahay galing sa Maynila noong gabi na petsa-25 ng Septembre." [27] At about 12 noon of September 27, 1996, while she was outside the house washing clothes, she had a foreboding that something wrong was happening to Jenny. When she went inside the house, she saw accused-appellant naked on top of Jenny and having sexual intercourse with her.

Accused-appellant claims that complainant Jenny incurred some inconsistencies in her testimony. At one time, during cross-examination, [28] Jenny said accused-appellant merely poked his finger into her vagina but on re-direct examination, [29] she claimed that accused-appellant first inserted his finger and later, his penis into her vagina. Likewise, her statement during cross-examination, [30] that she was in school on September 27, 1996, was corrected on re-direct examination, [31] wherein she stated that she was at home alone with accused-appellant when the rape occurred at noontime.

Suffice it to state that these are inconsequential lapses that can be expected of a young girl in view of the harrowing experience she is called upon to recall. Such minor inconsistencies, far from detracting from the veracity of her testimony, in fact tend to bolster it. [32]

Fourth. Considering accused-appellant as the stepfather of complainants Lenny and Jenny, the trial court imposed on him the death penalty for each count of rape.

This is error. Art. 335 of the Revised Penal Code, as amended by §11 of R.A. No. 7659, provides that the death penalty shall be imposed if the crime of rape is committed against a victim 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. This provision requires the concurrence of the minority of the victim and her relationship to the offender in order to justify the imposition of the death penalty. It is thus a qualifying circumstance which increases the penalty, distinguished from a generic aggravating circumstance which affects only the period of the penalty. As such, it should be alleged in the information as a requirement of the accused's constitutional right to be informed of the nature and cause of the accusation against him. [33] Moreover, such a special qualifying circumstance must not only be alleged in the information but must also be proved with certainty; otherwise, the death penalty cannot be imposed. [34]

In these cases, the informations in Criminal Case Nos. 8899-8900 alleged that accused-appellant, "who is the stepfather of the private offended party" by "force, violence and intimidation" succeeded in having carnal knowledge of the latter when she was then 14 and 13 years old, respectively. On the other hand, the informations in Criminal Case Nos. 8945-8946 alleged that accused-appellant, "who . . . is the stepfather of victim Jenny Macaro" succeeded in having carnal knowledge of the latter, who was a girl below 12 years old. As already noted, contrary to these allegations, accused-appellant is not really the stepfather of complainants Lenny and Jenny because accused-appellant and complainants' mother were not legally married but were merely living in common-law relation. In fact, Lenny [35] and Jenny [36] interchangeably referred to accused-appellant as their stepfather, "kabit," "live-in partner ng Mama ko," "tiyo," and "tiyuhin." Complainants' sister-in-law, Rosalie Macaro, also testified that her "mother-in-law is not legally married to accused-appellant." [37] Accused-appellant likewise said on direct [38] and cross-examination [39] that he was not legally married to the mother of the complainants, and he referred to her as his live-in partner. This was confirmed by Emma Macaro, [40] mother of the complainants. Although the rape of a person under eighteen (18) years of age by the common-law spouse of the victim's mother is punishable by death, this penalty cannot be imposed on accused-appellant in these cases because this relationship was not what was alleged in the informations. What was alleged was that he is the

stepfather of the complainants.

Neither can accused-appellant be meted the death penalty in Criminal Case No. 8900 where he committed the rape after threatening the victim, Lenny Macaro, with a knife. Under Art. 335 of the Revised Penal Code, simple rape is punishable by "reclusion perpetua." When the rape is committed "with the use of a deadly weapon," i.e., when a deadly weapon is used to make the victim submit to the will of the offender, the penalty is "reclusion perpetua to death." This circumstance must however be alleged in the information because it is also in the nature of a qualifying circumstance which increases the range of the penalty to include death. In Criminal Case No. 8900, while complainant Lenny testified that accused-appellant raped her after threatening her with a knife, the "use of a deadly weapon" in the commission of the crime was not alleged in the information. Therefore, even if the same was proved, it cannot be appreciated as a qualifying circumstance. The same can only be treated as a generic aggravating circumstance which, in this case, cannot affect the penalty to be imposed, i.e., reclusion perpetua. Accordingly, the accused-appellant should be sentenced to the penalty of reclusion perpetua for each of the four counts of rape.

With regard to the civil indemnity, the trial court correctly awarded P100,000.00 each to complainants Lenny and Jenny Macaro or P50,000.00 for each count of rape.[41] In addition, however, the amount of P50,000.00 as moral damages should also be granted in each case. We have held that this award is to be given even if there is neither allegation nor evidence of the trauma constituting the basis of such award as the same is necessarily included in a charge of rape.[42]

WHEREFORE, the decision of the Regional Trial Court, Branch 38, Daet, Camarines Norte, in Criminal Case Nos. 8899, 8900, 8945 and 8946 is AFFIRMED with the following MODIFICATIONS:

(1) In Criminal Case Nos. 8899-8900, accused-appellant is sentenced to reclusion perpetua and is hereby ordered to pay the offended party, Lenny Macaro, the amount of P50,000.00, as civil indemnity, for each count of rape or the total amount of P100,000.00 and the additional amount of P50,000, as moral damages, for each count of rape or the total amount of P100,000.00; and

(2) In Criminal Case Nos. 8945-8946, accused-appellant is sentenced to reclusion perpetua and is hereby ordered to pay the offended party, Jenny Macaro, the amount of P50,000.00, as civil indemnity, for each count of rape or the total amount of P100,000.00 and the additional amount of P50,000.00, as moral damages, for each count of rape or the total amount of P100,000.00.

SO ORDERED.

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

Vitug, J., on official business.

[1] Per Judge Sancho Dames II.

[2] TSN (Lenny Macaro), pp. 4-7, March 4, 1997.

[3] Id., pp. 7-18; Affidavit of Lenny V. Macaro dated October 17, 1996 (Exh. A), Records, pp. 6-7a.

[4] TSN, pp. 2-16, March 5, 1997; Affidavit of Lenny V. Macaro dated Oct. 17, 1996, supra.

[5] TSN (Jenny Macaro), pp. 2-18, March 11, 1997; TSN (Lenny Macaro), pp. 16-24, March 5, 1997; Affidavit of Jenny Macaro dated Oct. 17, 1996 (Exh. D)

[6] TSN (Jenny Macaro), pp. 19-24, March 11, 1997.

- [7] TSN (Lenny Macaro), pp. 27-33, March 5, 1997.
- [8] TSN, pp. 2-10, April 7, 1997.
- [9] TSN (Corazon A. Pitero), pp. 29-34, March 21, 1997.
- [10] Records, pp. 42-44; 46-48.
- [11] TSN, pp. 2-13, April 14, 1997; TSN, pp. 2-9, May 8, 1997.
- [12] TSN, pp. 26-40, May 8, 1997.
- [13] TSN, pp. 12-16, March 4, 1997.
- [14] TSN, p. 21, March 10, 1997.
- [15] TSN, pp. 7-9, March 5, 1997.
- [16] TSN, pp. 8-10, 13-18, March 11, 1997.
- [17] Id., pp. 19-22.
- [18] *People v. Emocling*, 297 SCRA 214 (1998)
- [19] E.g., *People v. Pambid*, G.R. No. 124453, March 15, 2000; *People v. Atienza*, G.R. No. 131820, Feb. 29, 2000; *People v. Molas*, 286 SCRA 684 (1998)
- [20] *People v. Perez*, 296 SCRA 17 (1998)
- [21] *People v. Acala*, G.R. Nos. 127023-25, May 19, 1999.
- [22] *People v. Pambid*, supra; *People v. Balgos*, G.R. No. 126115, Jan. 26, 2000; *People v. Trimor*, 243 SCRA 129 (1995); *People v. Amamangpang*, 291 SCRA 638 (1998)
- [23] *People v. Henson*, 270 SCRA 634 (1997)
- [24] *People v. Maglente*, G.R. Nos. 124559-66, April 30, 1999.
- [25] *People v. Napiot*, G.R. No. 119956, Aug. 5, 1999.
- [26] *People v. Silvano*, G.R. No. 127356, June 29, 1999; *People v. Cantos*, G.R. No. 129298, April 14, 1999.
- [27] Records, p. 7.
- [28] TSN, pp. 40-41, March 11, 1997.
- [29] Id., pp. 41-42.
- [30] Id., pp. 32-33.
- [31] Id., pp. 42-43.
- [32] *People v. Padilla*, 301 SCRA 265 (1999)
- [33] *People v. Lim*, supra; *People v. Manggasin*, G.R. Nos. 130599-600, April 21, 1999; *People v. Ilao*, 296 SCRA 658 (1998); *People v. Ramos*, 296 SCRA 559 (1998); *People v. Garcia*, 281 SCRA 463 (1997)
- [34] *People v. Panique*, G.R. No. 125763, Oct. 13, 1999; *People v. Gallo*, G.R. No. 124736, Sept. 29, 1999; *People v. Acala*, G.R. Nos. 127023-25, May 19, 1999; *People v. Maglente*, supra; *People v. Manggasin*, supra; *People v. Cantos*, supra.
- [35] TSN, pp. 4-7, March 4, 1997; TSN, pp. 3-4, 14, 27, 38, March 5, 1997; TSN, p. 6, March 10, 1997.
- [36] TSN, pp. 5, 17-19, March 11, 1997.
- [37] TSN, p. 6, March 21, 1997.
- [38] TSN, p. 3, April 14, 1997; TSN, p. 3, May 8, 1997.
- [39] TSN, p. 9, May 8, 1997.
- [40] Id., pp. 33-34.
- [41] *People v. Panique*, supra; *People v. Lim*, supra; *People v. Acala*, supra; *People v. Maglente*, supra; *People v. Manggasin*, supra.
- [42] *People v. Prades*, 293 SCRA 411 (1998) cited in *People v. Maglente*, supra; *People v. Alba*, G.R. Nos. 131858-59, April 14, 1999.

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