PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO HERNANDEZ Y PALMA, ACCUSED-APPELLANT.

G.R. Nos. 134449-50. October 25, 2001

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PER CURIAM:

For automatic review is the consolidated decision[1] of the Regional Trial Court of Batangas City, Branch 4, in Criminal Cases Nos. 9094-95, finding appellant Pedro Hernandez y Palma guilty on two (2) counts of rape of his minor daughter, Wilma Nieva Hernandez. For each count appellant was sentenced to death and ordered to pay the victim the sum of P50,000 as moral and exemplary damages.[2]

> In Criminal Case No. 9094, the information reads:
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> That sometime and within the month of October, 1994, at about 10:00 o'clock in the evening, at Brgy. Natunuan, Municipality of San Jose, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously lie with and have carnal knowledge with the said Wilma Nieva Hernandez, his thirteen (13) year-old daughter, against her will and consent.
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> Contrary to law.[3]
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> In Criminal Case No. 9095, the charge reads:
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> That on or about the 24[th] day of February, 1997, at about 9:30 o'clock in the evening, at Barangay Natunuan, Municipality of San Jose, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously lie with and have carnal knowledge with the said Wilma Nieva Hernandez, his sixteen (16) year old daughter, against her will and consent.
>
> Contrary to law.[4]

On October 28, 1998, appellant was arraigned in both cases. Assisted by counsel de oficio, he pleaded not guilty to the charges. Trial on the merits commenced. As the two cases involved the use of common evidence, a joint trial was held.

The prosecution first presented complainant, WILMA HERNANDEZ, who was 16 years old at the time she took the witness stand. Pertinent to Criminal Case No. 9094, she testified that sometime in mid-October 1994, at about 10:00 P.M., she was awakened from her sleep when her father entered her mosquito net and started touching her private parts. He told her to undress and when she refused, he boxed her in the stomach and started to sexually abuse her. He inserted his penis into her vagina until he ejaculated. This incident happened while her siblings were in the "other room" of their house.

Although she could not state precisely how many more times her father raped her, between the first and the last rape, she stated that he did it more than 20 times. She, however, recalled clearly the last one, which happened on February 24, 1997, subject of Criminal Case No. 9095. She recounted that at around 9:30 P.M., she was sleeping

when her father arrived home from a drinking spree. He lay beside her and started to touch her private parts and ordered her to undress and had intercourse with her. He boxed her when she started to make noises and threatened to harm her if she told anyone.

During cross-examination, she described their house as a one-room dwelling. When she was first raped, there were two bamboo beds (papag) in the room. The two beds were only about three feet apart, separated by a course cloth (katsa). She admitted she did not shout when her father first raped her but only uttered a stifled cry. As she was being raped, her father would hurt her or threaten her bodily harm if she would make noises or tell anyone. He sometimes undressed her, touched her breasts and inserted his fingers in her vagina before he would undress and insert his penis in her vagina. When asked if she tried to tell her mother of her ordeal, she said that she wrote her mother and left the letter on top of their television, but her father discovered it and after he read it, he accused her of trying to ruin his reputation. Her mother just advised her to keep it a secret because revealing her ordeal would bring shame to their family. When asked if she had a boyfriend, she said no.[5]

She testified that after the rape on February 24, 1997, on the night her father had arrived from a drinking spree, she succeeded in escaping from her father. She escaped to a neighbor's house and never returned home, although her father told her siblings to get her. She went to her uncle's house and told him of her ordeal.[6]

On December 11, 1997, DR. RODORA JAREÑO, a resident obstetrician-gynecologist of the Batangas Regional Hospital, testified that on request of a barangay kagawad, she conducted a physical examination on Wilma Hernandez, and found that she had a contusion on the left arm. Also, there were healed and incompletely healed lacerations in her hymen in the 4, 6, and 7 o'clock positions. Her introitus[7] admitted two fingers with ease and her cervix tip was softish, short; and her uterus was small and negative. There was adnexae[8] mass; negative bleeding; and no sperm cells found. She also stated that her findings on Wilma's genitalia could have been caused by biking, horseback riding, or penile penetration. Dr. Jareño also testified that Wilma admitted having had sexual intercourse with another since she had been raped by her father.[9]

Next on the witness stand was GLORIA HERNANDEZ, mother of Wilma. She testified that her daughter told her sometime in mid-1995 that the latter was being sexually abused by appellant. Her husband denied he molested Wilma sexually when she confronted him about it. She further stated that her husband, who was a soldier for 22 years, when drunk would hurt her and her children.[10] She said that she was never an actual witness to the sexual abuse of her daughter, who never told her of being raped. However, Wilma had told her that appellant did acts of lasciviousness. On cross-examination, however, she admitted that Wilma told her many times that she had been raped by her own father. She recounted that she was in Manila in 1997 when a barangay councilwoman, "Ka Tinay," assisted her daughter in reporting the rape.[11] It is not quite clear if she was also in Manila in 1994, during the first rape committed by appellant.

JUSTINA GARCIA, the councilwoman, corroborated the testimony of Gloria Hernandez. Justina testified that she was the one who brought Wilma for medical examination. She said that Gloria had told her that Wilma was being sexually abused by her father. The night of the last rape, when Wilma escaped from her father's house, she found Wilma in the house of a Consuelo Dimaapi, in Bauan. She found Wilma had bruises all over her body and her eyes were swollen from crying. There, Wilma narrated her ordeal. Two days after, Justina heard that Gloria was going to take Wilma to Manila, so, she took Wilma to her place in Brgy. Natunuan in San Jose, Batangas and then accompanied her to the hospital for the medical examination. On cross-examination, she added that there had been rumors in their place that appellant was sexually abusing his daughter. Even appellant's father had told her that when drunk, appellant liked to have sex with Wilma. At about the same period, she noticed that Wilma no longer attended choir practices.[12]

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When it was the turn of the defense, GLORIA HERNANDEZ was again presented. Gloria testified that during the period that Wilma claimed she was being raped by her father, she observed that her husband became strict with their daughter. She, however, swore that she never witnessed her husband sexually abuse their daughter nor commit lascivious acts on her. When asked if she still loved her husband, she answered, "Now, not anymore because of what he did to my daughter."[13]

On June 8, 1998, appellant PEDRO HERNANDEZ testified in his own defense. He denied all accusations against him and offered an alibi as his defense.[14] With respect to the alleged rape in October of 1994, subject of Criminal Case No. 9094, appellant categorically denied raping his daughter. When asked why Wilma would accuse him of raping her, he answered he did not know and could only surmise that it was because he castigated her for his missing P4,000. He also averred that he only slapped his children when they did not follow his orders.[15]

On the alleged rape committed on February 24, 1997, subject of Criminal Case No. 9095, appellant recalled that he was at the house of his brother-in-law at Barangay Natunuan, San Jose, Batangas. At that time his wife was in Manila applying for a job abroad. When he came home that evening, he noticed that his daughter, Wilma, was not home and when he knocked on the door shouting, his sons woke up and scampered away. He found out that Wilma was sleeping in his sister-in-law's house. He told his sons to fetch her after he discovered his P4,000 was missing.[16]

The trial court found the testimony of private complainant credible and amply supported by medical evidence. It rendered judgment as follows:

> In the light of all the foregoing consideration, the Court is morally convinced that accused Pedro Hernandez y Palma, did in fact commit the offenses charged in these cases. He is therefore found Guilty beyond reasonable (doubt) of committing the heinous crime of rape in each of these two cases under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 and is therefore sentenced to the capital penalty of Death in each of these cases, considering that the complainant is his 16 year old minor daughter living with him at the time these offenses were committed. The herein accused is further directed to indemnify the private offended party, Wilma Hernandez, with the sum of Fifty Thousand (P50,000.00) for each case as moral and exemplary damages.
>
> SO ORDERED.[17]

Pursuant to the second paragraph of Article 47 of the Revised Penal Code,[18] the penalty imposed being death, the cases are now before this Court for review.

In his brief, appellant assigns two errors:

> - THE TRIAL COURT ERRED IN GIVING FULL AND UNCONDITIONAL CREDENCE AND CONSIDERATION TO THE TESTIMONY OF WILMA HERNANDEZ DESPITE FACTUAL AND MATERIAL INCONSISTENCIES IN HER TESTIMONY.
>
> - THE TRIAL COURT ERRED IN NOT GIVING ANY PROBATIVE VALUE TO THE TESTIMONY OF MRS. GLORIA HERNANDEZ.

Thus, here the sole issue pertains to the credibility of witnesses. However, we shall also inquire into the propriety of the death penalty imposed twice on appellant.

Appellant assails the credibility of complainant's testimony. He contends that a minute scrutiny of Wilma's testimony would show that her declarations on the witness stand are so riddled with inconsistencies and are contrary to normal experience. Specifically, appellant argues that when asked to describe the layout of their house

when she was allegedly raped in October 1994, Wilma testified that it was a one-room structure, with their living room used as a sleeping area at night. He points out that her testimony contradicts her statement that when she was raped for the first time, her mother and siblings were "sleeping in the other room." He avers that if Wilma could not even be sure on the layout of their house where she was raped, then her testimony should be of scant evidentiary value.

For the State, the Office of the Solicitor General (OSG) points out that there is no question that at the time the victim was first raped by her own father, their house consisted of a kitchen and one main room. However, the room had a curtain dividing the only room into two sections or "rooms". Thus, when Wilma testified on the "other room," she meant the other half of the room divided by the curtain. The OSG supported the findings and conclusion of the trial court.

We agree with the position taken by the OSG. In our review of Wilma's entire testimony, we find her testimony consistent on the subject of the principal occurrence of the two rapes and the positive identification of her violator in both instances. Despite certain variances on details, we find that her testimony as a witness consistently refers to significant facts, which are crucial to the innocence or guilt of an accused.[19] A perfect description of the crime scene is not essential for it is not an element of the crime. The reference to the "other room" by complainant indeed meant the other half of the room divided by the katsa curtain. Her alleged contradictory statements pertain only to minutiae, not touching on the essentials of the crime. A minor inconsistency, if any existed, strengthens rather than diminishes the credibility of complainant as it erases suspicion of a contrived testimony.[20] The disputed point on whether her mother was home either in mid-October 1994 or on February 24, 1997, appears to us secondary.

Appellant argues that in times of distress, natural human behavior should have propelled complainant to at least make a noise to alert or awaken her mother, who was sleeping merely three (3) feet away. He submits that her failure to do so is not only contrary to human behavior and experience, but also renders her charge doubtful.

We note, however, that at the time of the alleged rape in October 1994, Wilma was only thirteen (13) years old. That she did not shout for help nor awaken anyone else in the house does not mean she was not raped.[21] Recall that she testified that appellant had boxed her into submission.[22] Her youth, her fear of her father and his paternal ascendancy over the victim are sufficient reasons why she could not cry out.

Appellant also contends that Wilma said she had struggled against her ravisher atop the bamboo bed (papag). If this was so, he argues, his wife close by should have been awakened by the noise of the bed. That the latter did not wake up casts suspicion on Wilma's narration. On this matter, we have repeatedly held that rape can be committed in the same room where other members of the family are sleeping, and it is neither impossible nor incredible for the family members to be in deep slumber and not be awakened while the sexual assault is being committed.[23] Moreover, appellant's claim that his wife was not awakened that night of the rape in 1994 is not accurate. In fact, she was awakened and asked what was happening late as it was.[24] In our view, it was the mother's fear of scandal and shame mentioned earlier that inhibited her responses.

In a further bid to undermine the victim's credibility, appellant suggests that she was inconsistent regarding her mother's whereabouts at the time of the rape of February 24, 1997. He stresses that complainant said her mother woke up when the former fled the family house. However, he claims she contradicted herself when she later said that on said date, her mother was in Manila applying for an overseas job.

Appellant's assertion is, to say the least, misleading. Our review of complainant's testimony shows that it was on the occasion of the first rape in 1994 that the victim ran out of the house, causing her mother to wake up.[25] Nowhere did complainant declare that she dashed out of the house on February 24, 1997, thus rousing her mother.

What she testified was that on the night of February 24, 1997, only her siblings were at home with her[26] and that her mother was in Manila.[27]

Consequently, we find no reason to overturn the trial court's finding that complainant's testimony is credible. Moreover, the well-established rule is that, on the issue of credibility, the trial court is in a better position than the appellate or reviewing court because the former had the full opportunity to observe directly the witness' deportment and manner of testifying.[28] Hence, in the absence of palpable error or grave abuse of discretion, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.[29]

Moreover, the complainant here was only 13 years old at the time she was first raped and 16 when she testified. No young and decent lass will publicly cry rape, particularly against her own father, if such were not the truth, or if justice were not her sole objective.[30] We note here not only the young victim's vulnerability but also the shame and embarrassment to which her family would be exposed by a public trial if the matters about which she testified were not true.[31] Thus, we find appellant's first assigned error untenable.

In his second assigned error, appellant assails the trial court for convicting him notwithstanding the fact that his wife, Gloria Hernandez, testified that she never saw him rape their daughter. He insists that he did not rape her daughter, and that the lower court erred in disregarding Gloria's testimony. He claims his wife was in the best position to know whether he had raped their own daughter inside the family house.

However, we note that appellant's conviction was not sealed by the trial court's refusal to give probative value to his wife's testimony. It was the victim's candid and categorical testimony and the medical evidence that the trial court relied on. Gloria was presented both as a prosecution witness and a defense witness. For the prosecution, she testified to corroborate her daughter's own testimony. Gloria testified that she had seen appellant raping their daughter.[32] As a defense witness, she reiterated her claim that she witnessed her husband raping the victim,[33] only to contradict herself on the witness stand.[34] In view of her contradictory statements, we find that the trial court did not err in disregarding Gloria's testimony.

Peculiar to prosecution of rape, more often than not, there are no third-person witnesses to the crime; the victim is generally left to testify for herself against her violator.[35] Thus we find applicable the doctrine that when a woman says she has been raped, she says in general all that is necessary to show that she has been violated, and the accused may be convicted on the sole basis of her testimony provided that it meets the test of credibility.[36] Not only do we find the victim's testimony here straightforward, candid, and consistent on material points, we likewise find that she had no ill-motive to falsely testify against the accused. Appellant's claim that she charged him with rape only after he castigated her about his missing money is unconvincing. Only a truly disturbed girl would concoct stories of rape which would put her own father on death row and drag herself and the rest of her family to a lifetime of shame.[37] Appellant has not shown that complainant was so disturbed mentally and emotionally. We have no doubt whatsoever that appellant is guilty of rape as charged.

However, should the death sentence be imposed in both cases? Under R.A. 7659, amending Article 335 of the Revised Penal Code, the crime of rape requires that, for death to be imposable, the minority of the victim and her relationship with the offender must both be alleged in the information for rape.[38] Both circumstances must also be proved convincingly. Failure to allege and prove either or both of these circumstances precludes the imposition of the death penalty. A reading of the charge sheets in Criminal Cases Nos. 9094 and 9095 shows that in both cases, appellant was charged with having carnal knowledge of his minor daughter. Not only the relationship between offender and offended was categorically proved; the actual age of the victim, Wilma Hernandez, was also proved beyond doubt at the trial. It was clearly shown by the prosecution and admitted by the defense that the victim is appellant's own daughter. With respect to her minority, not only was complainant's mother presented by

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the prosecution to testify as to the victim's age, but both her birth certificate[39] and certificate of baptism[40] were also presented to show her age and her minority. The prosecution's evidence shows that complainant was born on February 13, 1981. She was thirteen (13) years old at the time appellant raped her in mid-October 1994, and sixteen (16) years of age when appellant last ravished her on February 24, 1997. With the concurrence of the relationship of the victim to the offender and her minority, the imposition of the death penalty on the appellant for each count of rape is proper.

Concerning damages, the trial court awarded complainant P50,000 as "moral and exemplary damages". This award, however, is imprecise and inadequate, and should be modified. In a case where the rape is qualified and the death penalty imposed, the victim is entitled to indemnity ex delicto of not less than P75,000.[41] This is separate and distinct from the P50,000 moral damages automatically awarded to a rape victim upon conviction of the accused. In addition, we find in order an award of P25,000 in exemplary damages here so as to deter fathers with perverse tendencies from subjecting their own daughters to sexual abuse.

Four members of the Court maintain their position that capital punishment is unconstitutional. However, they submit to the decision of the majority of the Court upholding the legality of the law re-imposing the death penalty for heinous crimes.

WHEREFORE, the instant appeal is DENIED. The consolidated decision of the Regional Trial Court of Batangas City, Branch 4, in Criminal Cases Nos. 9094 and 9095, finding appellant Pedro Hernandez y Palma guilty beyond reasonable doubt of two (2) counts of qualified rape and imposing upon him the death penalty for each count is AFFIRMED, with the MODIFICATION that appellant shall pay the victim, Wilma Nieva Hernandez, the sum of P75,000 as civil indemnity, P50,000 as moral damages, and P25,000 as exemplary damages for each count of rape.

Upon promulgation of this decision, let the records of this case be promptly forwarded to the Office of the President for possible exercise of her constitutional prerogative to grant executive clemency.

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] Records, Criminal Case No. 9095, pp. 99-104.

[2] Id. at 104.

[3] Records, Criminal Case No. 9094, p. 1.

[4] Supra note 1 at 1.

[5] TSN, November 24,1997, pp.1-18.

[6] Id. at 18-20.

[7] Introitus means the vaginal opening (Webster's Third New International Dictionary, 1993 edition).

[8] Adnexae pertains to the uterus (Webster's Third New International Dictionary, 1993 edition).

[9] TSN, December 11, 1997, pp. 3-5.

[10] TSN, December 2, 1997, pp. 4-6.

[11] Id. at 10.

[12] Id. at 12-20.

[13] TSN, March 4, 1998, p. 5.

[14] TSN, June 8, 1998, p. 8.

[15] Id. at 9.

[16] Id. at 1-6.

[17] Records, Criminal Case No. 9095, p. 104.

[18] ART. 47. In what cases the death penalty shall not be imposed: Automatic review of death penalty cases.

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In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment by the court en banc, within twenty (20) days but not earlier than fifteen (15) days after promulgation of judgment or notice of denial of any motion for new trial or reconsideration. The transcript shall be forwarded within ten (10) days after the filing thereof by the stenographic reporter.

[19] People v. Sancha, G.R. Nos. 131818-19, 324 SCRA 646,654 (2000).

[20] People v. Mamac, G.R. No. 130332, 332 SCRA 547, 553-554 (2000), citing People v. Tan, Jr., G.R. Nos. 103134-40, 264 SCRA 425 (1996).

[21] People v. Barcelona, G.R. No. 125341, 325 SCRA 168, 176 (2000), citing People v. Luzorata, G.R. No. 122478., 286 SCRA 487 (1998).

[22] TSN, November 24, 1997, pp. 10-11, 13.

[23] People v. Cula, et al., G.R. No. 133146, 329 SCRA 101, 111 (2000), citing People v. Sangil, Sr., G.R. No. 113689, 276 SCRA 532 (1997).

[24] TSN, November 24, 1997, p. 15.

[25] Id. at 13-15.

[26] Id. at 18.

[27] Id. at 10.

[28] People v. Mendez, G.R. No. 132546, 335 SCRA 147, 155 (2000), citing People v. Narido, G.R. No. 132058, 316 SCRA 131 (1999).

[29] People v. Mendez, supra, citing People v. Bolatete, G.R. No. 127570, 303 SCRA 709 (1999).

[30] People v. Tabanggay, G.R. No. 130504, 334 SCRA 575, 597 (2000), citing People v. Castromero, G.R. No. 118992, 280 SCRA 421 (1997).

[31] People v. Clopino, G.R. No. 117322, 290 SCRA 432 (1998).

[32] TSN, December 2, 1997, p. 7.

[33] TSN, March 4, 1998, p. 4.

[34] Id. at 5.

[35] People v. Penaso, G.R. No. 121980, 326 SCRA 311, 318 (2000), citing People v. Domogoy, G.R. No. 116738, 305 SCRA 75 (1999).

[36] People v. Hofileña, G.R. No. 134772, 334 SCRA 214, 222 (2000), citing People v. Penaso, supra; People v. Garces, Jr., G.R. No. 132368, 322 SCRA 834 (2000); People v. Borja, G.R. No. 114183, 267 SCRA 370 (1997); People v. Ramirez, G.R. No. 97920, 266 SCRA 335 (1997).

[37] People v. Magdato, G.R. Nos. 134122-27, 324 SCRA 785, 797 (2000), citing People v. Cabanela, G.R. No. 127657, 299 SCRA 153 (1998).

[38] People v. Traya, G.R. No. 129052, 332 SCRA 499, 515 (2000).

[39] Exhibit "C", Records, Criminal Case No. 9095, p. 63.

[40] Exhibit "D", Id. at 62.

[41] People v. Magat, G.R. No. 130026, 332 SCRA 517, 531 (2000), citing People v. Mahinay, G.R. No. 122485, 302 SCRA 455 (1999); People v. Prades, G.R. No. 127569, 293 SCRA 411 (1998); People v. Victor, G.R. No. 127903, 292 SCRA 186 (1998).

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