

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BLESIE VELASCO, ACCUSED-APPELLANT.*G.R. Nos. 135231-33. February 28, 2001*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-135231-33/>**PER CURIAM:**

Thrice twelve (12)-year old Raquel Yasas fell prey to the sexual assaults of Blesie Velasco, her stepfather, who instead of showing remorse for his lechery had the audacity to claim that he and his stepdaughter were actually lovers mutually driven into nocturnal trysts and coital adventures. Invoking this inconceivable and immoral "sweetheart theory" to explain away his disgraceful misdeeds only strengthens our resolve to expel him permanently from society.

On 20 May 1997, after a preliminary investigation conducted by the Municipal Circuit Trial Court of Iloilo,[1] three (3) Informations for rape were filed against Blesie Velasco. The Informations similarly alleged that Raquel Yasas,[2] a twelve (12)-year old minor, was forced and intimidated by Blesie Velasco, her stepfather, to have sexual intercourse with him.[3] With the same complaining witness and accused, Crim. Cases Nos. 47746, 47747 and 47748 were consolidated and tried jointly by Br. 25 of the Regional Trial Court of Iloilo.[4]

Raquel Yasas claimed at the trial that she was formerly residing in Valencia, Bukidnon, with her biological father Bonifacio Panganiban, her mother Brenda Yasas and a younger sister.[5] After her father died, her mother married the accused Blesie Velasco with whom she bore two (2) daughters.[6] In April 1996 Brenda brought Raquel to live with them in the house of the accused in Barangay Ban-ag, Alimodian, Iloilo. But sometime in May 1996 Brenda left for Manila and never returned to Iloilo.[7] That was the last time Raquel saw her mother.[8] She had no inkling then what fate awaited her in the hands of her stepfather Blesie Velasco.

On 29 December 1996, at around 8:00 o'clock in the evening, after watching television at their neighbor's place, Raquel went to the house of accused's mother Enriqueta Velasco.[9] She was about to sleep there when the accused arrived at about 9:30 p.m. to fetch her. Upon seeing the accused Raquel began to cry and refused to go home with him as he appeared drunk and had a gun tucked in his waist.[10] But her Lola Tita (Enriqueta Velasco), scolded her for refusing to go home with her stepfather. Thus, despite her effort to avoid him, she was forced to go with him.[11]

On their way home, which was some fifty (50) meters away from Enriqueta Velasco's place, the accused picked up a bamboo pole (pusog) and ordered Raquel to sit on one of the dikes. He then began scolding her for always wandering away and threatened to beat her with the pole.[12] Suddenly, the accused dragged Raquel into an abandoned hut where he drew his firearm and aimed it at her temple. He threatened to bury her at the nearby creek unless she voluntarily undressed herself.[13] Gripped with fear, Raquel obeyed and removed her clothes. The accused then pinned her down on the floor and placed himself on top of her. She resisted by hitting and kicking him but to no avail. After the accused satisfied himself, he told her to dress up and threatened to kill her mother and her sisters if she ever revealed the incident to anyone.[14]

The second incident occurred on 7 January 1997. When Raquel went home at around 7:00 o'clock in the evening,

the accused told her to bring some medicine for her younger sister Maria Ve at her Lola Tita's house. Sensing that the accused might abuse her again she asked him if one of her sisters could go with her, but he refused and told her instead that he would accompany her himself. Fearing another sexual assault, Raquel no longer waited for him and rushed towards her Lola Tita's house, but the accused soon followed her there. Upon seeing her he reprimanded her for going ahead and angrily ordered her to return home. Her previous ordeal still fresh in her mind, Raquel started to cry and asked her Lola Tita if the latter could send one of her other sons, or her husband, to escort her home. But the accused retorted that there was no need as he was going with her any way.[15]

Raquel was unwilling to go with her stepfather at first, but when she looked out and saw some men approaching she consented to go home with him thinking that they were his brothers and that their presence would prevent him from harming her. But the accused was not to be deterred. On their way home he suddenly pointed a knife at Raquel's neck and dragged her near a tree beside an abandoned hut. He ordered her to remove her clothes and then pushed her on the ground. Again, the accused succeeded in having sexual contact with Raquel and thereafter threatened to kill her and her mother and sisters if she would tell anyone what happened.[16]

Raquel's sordid tales did not end there. On 17 January 1997 at around 8:00 o'clock in the evening Raquel and her sisters asked the accused if they could watch television at their neighbor's place. While he allowed her sisters to go, he told Raquel to stay as he wanted to talk to her. After her sisters left, the accused asked Raquel if she already had a boyfriend. When she answered in the affirmative, he berated her and ordered her to leave their house, which drove her to tears. Moments later, the accused ordered Raquel to fetch her sisters. On her way to their neighbor's place, she noticed the accused trailing her. She tried to outrun him but he eventually caught up with her. He threatened her with a gun and dragged her near a rice paddy. For the third time the accused ravished her against her will.[17]

Five (5) days later Raquel ran away and went to her mother's relative by the name of Gloria Tayong. Gloria immediately sent Raquel to Esther Tayong, Gloria's niece, in New Lucena. At the Municipal Hall of New Lucena, Raquel was introduced to Delia Juanico, Senior Social Worker of the DSWD to whom she unraveled her ordeal. Delia Juanico then brought her to Dr. Owen Lebaquin, Medico Legal Officer of the PNP Crime Laboratory, at Camp Delgado for examination.[18]

Dr. Owen Lebaquin testified that after receiving a request from the DSWD he examined Raquel Yasas on 3 February 1997. According to his medico-legal report, the hymen of Raquel had shallow healed lacerations at 2 o'clock position and deep healed lacerations at 5 o'clock, 9 o'clock and 10 o'clock. The external vaginal orifice offered no resistance to the examiner's index finger and the vaginal speculum, thus concluding that she was in a non-virgin state. However, there were no external signs of the application of any form of violence. There were no traces either of spermatozoa.[19]

Gloria Tayong, a cousin of Raquel's maternal great grandfather, testified that on 22 January 1997 Fabiola Lamiloho[20] brought Raquel to Gloria's place to protect her from her stepfather.[21] Gloria then told her son Rolando Tayong to bring the girl to Esther Tayong in New Lucena.

Esther Tayong narrated that she first saw Raquel when she was brought by a cousin to her house in New Lucena. Later, a DSWD representative summoned Raquel to appear at the Municipal Hall. Esther accompanied her there. After her interview, Raquel was allowed to stay first with Esther but after a few days the DSWD took her into custody.[22]

Delia Juanico testified that sometime in the last week of January 1997 she received a referral letter from Agnes Hermo, the Social Worker of New Lucena.[23] On 31 January 1997 she went to the Municipal Hall of New Lucena to interview Raquel Yasas, the reported victim. At the interview, Raquel disclosed that her stepfather

raped her on three (3) separate occasions.[24] Thereafter, Delia Juanico brought her to Dr. Owen Labaquin at the PNP Crime Laboratory for examination.

Accused Blesie Velasco denied that he forced and intimidated Raquel to have sex with him. He claimed instead that their sexual liaisons stemmed from their mutual love and passion. Being lovers they regularly engaged in sex from September of 1996 to January of 1997.[25] According to him, after receiving a letter from Brenda Yasas that she would not return to him anymore, he began courting Raquel and that, after two (2) weeks, she accepted him.[26] He offered to marry her but she spurned his offer as she wanted to finish her studies.[27] Their relationship afterwards blossomed until it was abruptly ended on 19 January 1997 when Fabiola Lamiloho fetched her from school and brought her to the house of Gloria Tayong. Raquel still went home that night to the house of the accused but after going back to the house of Gloria Tayong the following day but she never returned. When the accused looked for her at Gloria's house the latter refused to let Raquel go with him as she was afraid he would violate Raquel again. He explained that they were lovers but Gloria refused to believe him.[28]

On 20 March 1997 the accused Blesie Velasco was arrested.[29]

Enriqueta Velasco confirmed her son's "sweetheart theory." She claimed that although she sternly opposed the plan of the accused to court his stepdaughter, he assured her that he would settle things with his wife.[30] Upon learning that he wanted to marry Raquel, she again expressed her serious disapproval.[31] However, he and Raquel never listened to her. They even shamelessly displayed their affection for each other like husband and wife.[32]

In its joint decision of 4 May 1998 the Regional Trial Court of Iloilo City, giving full credence to Raquel's testimony, convicted the accused Blesie Velasco of three (3) counts of rape under Art. 335 of The Revised Penal Code as amended. He was sentenced to death for each count and ordered to pay complaining witness Raquel Yasas P50,000.00 as indemnity, P50,000.00 as moral damages, P20,000.00 as exemplary damages, or a total of P360,000.00, plus the costs.[33]

Hence this automatic review.

In his brief the accused Blesie Velasco contends that the trial court erred in believing the testimony of Raquel Yasas on the ground that it was allegedly highly incredible, contradictory and improbable.

First. The assertion of complainant Raquel Yasas that the accused threatened to kill her mother Brenda Yasas who was no longer with them when the rapes were allegedly committed, is highly doubtful. It would have been absurd for the accused to threaten to kill someone whose whereabouts were unknown to him for, according to him, only a deranged person would make such a threat.[34]

Second. Although the complainant was consistent in stating that the accused used a gun on 29 December 1996 and a knife on 7 January 1997 to threaten her, she was uncertain as to what weapon he used on 17 January 1997. In her direct examination she testified -

Q: Were you able to go to the house of Hachero to watch T.V.?

A:

Yes, sir xxxx Afterwards, he held my neck and pointed a knife at me xxxx[35]

Q: Did you not shout for help?

A:

I did not shout or ask for help because he was pointing a gun at me.[36]

On cross examination she said -

Q: During the dates that you were raped by the accused, he was always armed with a knife?

A:

On December 29, he was armed with a gun, on January 7, a knife; on January 17 a gun.[37]

The accused insists that the type of weapon used for intimidation is an extremely significant fact which a real rape victim would not surely forget.[38]

Third. The complainant testified that each time she was ravished by the accused he dragged her and forcibly pinned her down while she resisted by kicking and punching him. However, a perusal of the medico-legal examination shows no evidence of any physical injuries which complainant would have surely sustained had she really been manhandled by her abuser. The absence of any external injuries therefore creates a doubt on the veracity of her allegations.[39]

Fourth. The complainant also testified that she revealed her harrowing experience to Delia Juanico sometime on 27 January 1997. If complainant was indeed raped, then why did it take her so long to tell anyone about her misfortune? This failure to disclose her ordeal creates further doubt on the truthfulness of her narration.[40]

Fifth. From the complainant's own testimony it can be gleaned that she had several opportunities to escape from her stepfather yet she never did. This proves that the sexual encounters were indeed consensual, for surely a ravished woman would flee from her abuser to safer grounds as soon as the opportunity presented itself.[41]

Sixth. The complainant's contradicting claims as to when she had her menstrual cycle impugns her credibility. In narrating the rape which occurred on 29 December 1996 she said -

Q: You were not menstruating that time?

A: I had already menstruated that time, but that particular time I do (sic) not have menstruation.

Q: How many days before you were sexually assaulted by the accused that you menstruated?

A: Two weeks before.[42]

But in testifying about the rape which occurred on 7 January 1997 she said -

Q:

That was your second experience. How did you feel upon insertion of his penis (into) your vagina?

A:

Painful still. I still felt pain. At that time, I had menstruation.[43]

According to the accused, if the complainant had her menstruation two (2) weeks prior to 29 December 1996, or on 14 December 1996, it would have been impossible for her to again have her menstruation on 7 January 1997 since the menstrual cycle of females occurs on a twenty-eight (28)-day basis. The complainant's testimony suggests that her menstrual cycle was only twenty-five (25) days, which is obviously contrary to human physiology thus making her testimony highly improbable and unbelievable.[44]

These grounds enumerated by the accused do not diminish the complainant's credibility.

While it may be true that the threats the accused made against the life of complainant's mother may appear to be futile as her whereabouts were then unknown, considering the tender age of the victim and the moral ascendancy

of the accused over her, she would have been easily intimidated by any threat he uttered. Besides, not only were the threats directed against her mother but also against herself and her sisters, which explains why she was forced to submit to his lustful advances and then cowed into silence.

The fact that complainant could not accurately recall the weapon used to intimidate her on the night of 17 January 1997 does not destroy her credibility. This Court has held countless times that a rape victim cannot be expected to keep an accurate account of her traumatic experience.[45] It is not unnatural for inconsistencies to creep into the testimony of a rape victim, especially one who is of tender age as the witness, in narrating the details of a harrowing experience.[46] What is essential is that Raquel clearly recalled that her stepfather threatened her with a weapon on three (3) separate occasions to force her to have sex with him.

As to the absence of any evidence of injury on Raquel's body in the medico-legal examination, it should be noted that she was examined by Dr. Owen Lebaquin on 3 February 1997, or almost seventeen (17) days after the last incident. Any bruise or scratch which she might have sustained on the night of 17 January 1997 could have already healed and hence no longer visible. More importantly, in rape cases, absence of bodily injuries does not matter where there is an existing relationship between the accused and the victim resulting in the moral ascendancy of the former over the latter. The accused being the stepfather of the victim certainly exercised moral and physical ascendancy over her, which would suffice to make her submit to his bestial desires.[47]

As for the delay in reporting the incident, suffice it to state that the failure of complainant to report the incident at once to the immediate members of her family or to the police did not detract from her credibility, her timidity and hesitation being attributable to her age, the moral ascendancy of the accused over her, and his threats against her and her family.[48]

The complainant indeed may have failed to escape at the earliest opportunity, and even stayed with the accused after thrice suffering her nightmares, but different people react differently to different situations, and there is no standard form of human behavioral response when one is confronted with a frightful experience. The victim's mien, rather than composure, could mean resignation, considering her continuing suffering, or apoplexy and numbness as the aftermath of her ordeal.[49] Thus, the fact that complainant failed to run away immediately from the accused and avoid his clutches should not be taken against her.

As regards the complainant's testimony on her menstrual cycle, we fail to see how her credibility can be affected by her assertion that her menstrual period came three (3) days prior to the accused's calculation. Such matter is too trivial to overturn her positive and straightforward allegation that her stepfather ravaged her. If at all, this insignificant and petty contention only illustrates accused's desperate attempt to point out inconsistencies in her testimony to make her narration appear questionable.

We therefore see no cogent reason to doubt the complainant's credibility. It has long been established that the testimony of a rape victims, especially a child of tender years, is given full weight and credit.[50] A rape victim who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness.[51] Furthermore, this Court has repeatedly ruled that matters affecting credibility are best left to the trial court because of its unique opportunity to observe that elusive and incommunicable evidence of the witness' deportment on the stand while testifying, an opportunity denied the appellate courts which usually rely only on the cold pages of the mute records of the case.[52]

In a final attempt to impute ill motive on complaining witness, the accused claims that she only concocted the rape charges to get back at him for beating up her mother when they were still living together. He cites her testimony -

Q: Now, did you have any ill feeling or grudge against the accused aside from the fact that he allegedly raped

you?

A: Yes there is.

Q: What is that grudge?

A: When we were still in Mindanao he hurt my mother.

Q: After that, was there any incident that your mother was hurt by the accused?

A: Yes, sir.

Q: When and where did that happen?

A:

Many times when we were still in Mindanao. In fact there was a time when my mother became crazy because of his beatings.

Far from aiding the cause of the accused, his claim of complainant's pent-up anger and ill motive only shows the absurdity of his defense. He asserts on one hand that complainant wanted revenge against him for previously maltreating her mother, yet on the other, he claims that he and complainant were "sweethearts" who regularly engaged in consensual sex from September of 1996 to January of 1997. If the complainant despised the accused to the point of seeking vengeance for the alleged maltreatment of her mother, then why would she accept his proposal of love and even have repeated consensual sex with him? The accused apparently suggests that twelve (12)-year old Raquel Yasas diabolically plotted to first have sex with him and then framed him up with fabricated rape charges to avenge her mother's supposed sufferings. Such a thought is simply preposterous, for no woman, especially of tender age, would conjure a story of defloration, allow an examination of her private parts and thereafter pervert herself by being subject to a public trial if she was not motivated solely by a desire to have the culprit apprehended and brought to justice.[53]

From the facts of this case, we are all the more convinced that the imputation of ill motive on the part of the complainant is but an afterthought. This is shown by the accused's own testimony -

Q:

Last question, up to now, you can not tell us of any reason why Rachel Yasas would charge you for rape in these three cases?

A: No, sir.[54]

It is basic that where there is no showing that the complainant was impelled by any improper motive in making the accusation against the accused, her complaint is entitled to full faith and credit.[55] We therefore affirm his conviction.

We now discuss the penalty imposed by the court a quo. In qualified rape, the concurrence of the minority of the victim and her relationship to the offender must both be alleged and proved with certainty, otherwise the death penalty cannot be imposed.[56] In the instant case, the three (3) Informations alleged that the victim was a twelve (12)-year old minor who was raped by her stepfather. But were these circumstances proved with certainty?

The records reveal that the prosecution never presented any birth certificate or any other official document to prove the allegation in the Informations that the complainant was only twelve (12) years old when the rapes were committed. Instead, her age was established only by her own testimony -

Q:

You are the same Rachel Yasas, the complainant in these three criminal cases 47746, 47747 and 47748 against the accused Blesie Velasco?

A: Yes, Sir.

Q: Now you gave your age as 13 years old. Can you tell us your date of birth?

A: 14 August, 1984.[57]

Is this testimony of the complaining witness as to her age sufficient to confirm her minority for the purpose of imposing the death penalty in qualified rape? In recent cases we have applied a rigid rule in determining the age of a rape victim where we refused to impose the death penalty due to the prosecution's inability to present independent evidence to substantiate the victim's minority. In *People v. Javier*[58] we held -

However, it is significant to note that the prosecution failed to present the birth certificate of the complainant. Although the victim's age was not contested by the defense, proof of the age of the victim is particularly necessary in this case considering that the victim's age was then 16 years old which is just 2 years below the majority age of 18. In this day of modernism there is hardly a difference between a 16 year old girl and an 18 year old one insofar as physical features and attributes are concerned. A physically developed 16 year old lass may be mistaken for an 18 year old young woman in the same manner that a frail looking 18 year old lady may pass as a 16 year old minor. Thus, it is in this context that independent proof of the actual age of the rape victim becomes vital and essential so as to remove an iota of doubt that the victim is indeed under 18 years of age as to fall under the qualifying circumstances enumerated in R.A. 7659.

In *People v. Cula*[59] we also ruled -

At all events, it is the burden of the prosecution to prove with certainty the fact that the victim was below 18 when the rape was committed in order to justify the imposition of the death penalty. The record of the case is bereft of any independent evidence, such as the victim's duly certified Certificate of Live Birth, accurately showing private complainant's age. The fact that accused-appellant Manuel has not denied the allegation in the complaint that Maricel was 16 years old when the crime was committed cannot make up for the failure of the prosecution to discharge its burden in this regard. Because of this lapse, as well as the corresponding failure of the trial court to make a categorical finding as to the minority of the victim, we hold that the qualifying circumstance of minority under Republic Act No.7659 cannot be appreciated in this case, and accordingly the death penalty cannot be imposed.

In *People v. Tipay*[60] we further declared -

This does not mean however, that the presentation of the certificate of live birth is at all times necessary to prove minority. The minority of a victim of tender age who may be below 10 is quite manifest and the court can take judicial notice thereof. The crucial years pertain to the ages of 15 to 17 where minority may seem dubitable due to one's physical appearance. In this situation, the prosecution has the burden of proving with certainty the fact that the victim was under 18 years of age when the rape case was committed to justify the imposition of the death penalty under the above cited provision,

The record of the case at bar is bereft of any independent evidence which would accurately show complainant's age. That complainant's age was alleged in the information and/or complaint as under 16 years is not sufficient. Nor does the lack of denial on the part of the accused-appellant excuse the prosecution from discharging its burden in this regard.

In *People v. Brigildo*[61] we held that the testimony of the victim was not sufficient to establish her minority even if her alleged age was far from the crucial ages of fifteen (15) to seventeen (17) years. We said -

The separate Informations in Criminal Case Nos. 4591-0 and 4607-0 alleged that the offended party in the two

rape cases was the appellant's step-daughter who is 11 years old. It is undisputed that the victim in the instant case is a minor. However, the records are unclear as to her exact age. The prosecution failed to present her birth certificate or any other evidence to prove just how old she really is. The separate Information filed alleged that the victim was 11 years old when she was raped in March and October 1994. Yet, testifying a year later, complainant claimed she was only 11 years old. Her mother's testimony on cross examination, by contrast would seem to indicate that she was around 15 years old at the time of the rapes complained of x x x x

Thus, we are faced with the uncertainty regarding private complainant's exact age, not only because of the prosecution failed to present her birth certificate or other equally acceptable official document concerning her date of birth.

However, in *People v. dela Cruz*[62] we accepted the testimony of the mother of the victim to prove her minority even without the presentation of the birth certificate or any other official document. We discussed how it differed from the cases of *People v. Javier*, *People v. Cula*, *People v. Tipay*, and *People v. Brigildo*. Thus -

The burden to prove the minority age of the victim is on the prosecution. As minority age is qualifying circumstance, it must be proved beyond reasonable doubt. Using this unbending yardstick, the death penalty was not imposed by this Court in cases where there is no evidence at all of the minority age of the victim or where the evidence was weak, unreliable and insufficient.

In *People vs. Javier*, the victim was alleged to be 16 years old. The Court observed that there is not much difference between a 16 and an 18 year old woman. Thus, we held that there is need to present independent proof of her actual age. We required the presentation of the minor's birth certificate but rightly, we did not rule out the presentation of the testimony of the victim's mother to prove minority in future cases. As minority was not proved by the prosecution we did not impose the death penalty.

In *People vs. Tipay*, the victim was alleged to be 15 years old. Once more, the Court observed that it was difficult to differentiate a 16 from an 18 year-old girl. We stressed that the crucial years were between 15 to 17 years and we held that, in this situation, the prosecution's proof of minority age of the victim must be given the strictest scrutiny. We examined the record of the case and found that there was no "independent" evidence that would prove the minority age. The victim's age was merely alleged in the Information. Again we did not impose the death penalty.

In *People vs. Cula*, the Court again did not appreciate the qualifying circumstance of minority. We held that there was absolutely no evidence at all on record to prove the victim's age. We even noted that the trial court failed to make a categorical finding regarding the minority of the victim. For failure of proof, we saved the accused-appellant from the death penalty.

In *People vs. Brigildo*, the prosecution again faltered in its task of proving the minority of the victim. We rejected the testimony of the victim's mother as to the victim's age as it contradicted the testimony of the victim herself. The Information in said case even alleged a different age. "Faced with uncertainty regarding private complainant's age, we declined to penalize the accused-appellant with death.

In the case at bar, however, the prosecution proved the minority age of the victim beyond reasonable doubt. Delia the victims' mother, categorically testified in the hearing of October 9, 1996 that her daughters were both (14) years of age at the time the rape incidents complained of x x x x

There is no reason to doubt Delia's testimony. As a mother, she has personal knowledge of the ages of her children. Her testimony was never challenged by the accused who could have presented the victim's birth certificate. Delia's testimony stood un rebutted by any other evidence (emphasis theirs).

Thus, it can be seen that a birth certificate or any other official document is no longer necessary to establish minority when the rape victim's mother, who has personal knowledge of her child's age, gives an unchallenged

testimony as to her daughter's age. But is the complainant herself a competent witness in ascertaining her age? In *People v. Silvano*[63] we held -

The testimony of a person as to her age is admissible although hearsay, for she can have no personal knowledge of the date of her birth, as knowledge as to one's age is acquired from whatever is told by the parents or relative - and such testimony constitutes an assertion of family tradition.

This principle was affirmed in *People v. Bali-balita*[64] where the victim's age was verified by her own testimony as to when she was born. We ruled -

In the case before us the victim herself testified that she was born on April 12, 1987 and that she was raped by the accused on August 26, 1997. She was only ten years and four months old at the time of the rape. We note that the victim testified in court in December 1997 or about four months after the rape, and it would not have been difficult for the trial court to take judicial notice that the victim is under 18 years of age.

In the case at bar, the complainant testified that she was born on 14 August 1984 and was repeatedly raped from December 1996 to January 1997. Thus, as in *People v. Bali-balita*, it can be sufficiently established that she was barely twelve (12) years and five (5) months old when the rapes occurred. Furthermore, as required in the cited case of *People v. Cula*, the victim's age was also affirmed by the trial court's categorical finding that complainant was "a minor of a little over 12 years, naive and innocent to the ways of the world and slender in physical built." [65]

Even the accused himself openly admitted throughout his testimony that the complainant was a twelve (12)-year old minor when he allegedly had consensual sex with her. He said -

Q:

April 1996 was five years from 1991, so Rachel must be 12 years old when she came to you in Bgy. Ban-ag?

A:

Yes, twelve x x x x

Q:

And you courted her despite the fact that she is (sic) only twelve (12) years old and you cannot (sic) marry her?

A:

Yes, I just courted her x x x x

Q:

Despite your awareness that she was only (12) years of age, you came out with the decision that she was to be your wife or to become your wife?

A:

Yes, sir.

COURT: Proceed.

Q:

At the time you courted her, this Rachel Yasas was studying in the elementary school and she was only grade 6?

A: Yes, sir.[66]

Since the allegation of minority (twelve [12] years old) in the Informations was established by the complainant herself, who is considered competent to testify on her age as it constitutes an Assertion of family tradition,[67] and by the open admission of accused as well as the categorical finding of the trial court, then such fact is deemed established with certainty. In this case, the birth certificate or any other official document proving minority serves no other purpose than to corroborate the testimonies of the competent witnesses and the categorical finding of the trial court.

The second circumstance to be established is the relationship of the accused to the complaining witness. The relationship of stepfather presupposes a legitimate relationship. A stepfather is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring.[68] In this case, such a relationship was also shown by the testimonies of witnesses.

Raquel Yasas testified that after Bonifacio Panganiban, her biological father, passed away her mother Brenda Yasas remarried -

Q: How about you, what is your relation with Blessie Velasco?

A: Stepfather.

Q: Why is it that this Blessie Velasco is your stepfather?

A: Because he married mother.

Q: When?

A: In September 1996.[69]

Q: Where?

A:

In Valencia, Bukidnon.

Q:

So there was a marriage ceremony between your mother and the accused, Blessie Velasco in Valencia, Bukidnon?

A: They were married in a civil ceremony.

Q: You were present when this ceremony was have (sic)?

A: Yes, Sir.[70]

The accused himself confirmed the existence of this marriage when he said -

Q: When did you married (sic) Brenda Yasas x x x x

A: In 1991 September 13.[71]

Even the mother of the accused affirmed her son's marriage to Brenda Yasas -

Q: These three (3) younger sisters of Raquel are they children of your son?

A: No. Of the three (3) younger sisters of Raquel only two (2) of them are children of my son.

Q: You mean that Blessie Velasco is married with another woman?

A: Married to the mother of Raquel x x x x

Q: So, your son is married to the mother of Raquel who is also the mother of her younger sisters?

A: Yes, sir.[72]

Undoubtedly, such testimonies of Raquel, the accused and his mother are sufficient to establish that the accused married Raquel's mother proving the stepfather-stepdaughter relationship alleged in the Informations. The trial court was therefore correct in imposing the death penalty for each count of rape.

With regard to the civil liability of the accused, we affirm the trial court's award of P50,000.00 for moral damages in each count of rape. In this jurisdiction, moral damages in rape cases may be awarded to the victim in such amount as the court deems just, without the need for pleading or proof of the basis thereof.[73] We also affirm the lower court's award of exemplary damages of P20,000.00 for each count of rape. However, in line with recent jurisprudence, the civil indemnity should be increased from P50,000.00 to P75,000.00 in each case since the commission of each rape was qualified by circumstances under which the death penalty is imposable in accordance with RA 7659.[74]

Four (4) members of the Court maintain their position that RA 7659, insofar as it prescribes the death penalty, is unconstitutional. Nevertheless they submit to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty should be accordingly imposed.

WHEREFORE, the Decision of the Regional Trial Court of Iloilo convicting the accused Blesie Velasco of three (3) counts of RAPE under Art. 335 of The Revised Penal Code and sentencing him to DEATH for each count of rape and to pay complaining witness Raquel Yasas P50,000.00 as moral damages and P20,000.00 as exemplary damages for each count of rape is AFFIRMED, with the MODIFICATION that the civil indemnity of P50,000.00 is increased to P75,000.00 for each count of rape.

Let the records of this case, upon finality of this Decision, be forwarded to the President for the possible exercise of the pardoning power.

SO ORDERED.

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

[1] Preliminary Investigation conducted by Judge Loida J. Diestro-Maputol, MCTC-Br. 14, Iloilo City, Records, pp. 11-17.

[2] In the TSN Raquel Yasas is sometimes referred to as "Rachel Yasas."

[3] Rollo, pp. 8-10.

[4] Presided by Judge Bartolome M. Fanuñal; Records, p. 18.

[5] TSN, 16 October 1997, p. 6.

[6] Id., pp. 6-7; TSN, 5 February 1998, p. 14.

[7] TSN, 5 February 1997, p. 15.

[8] TSN, 16 October 1997, p. 8.

[9] Id., p. 10.

[10] Id., p. 12.

[11] Id., p. 15.

[12] Ibid.

[13] Id., p. 16.

[14] Id., pp. 16-20.

[15] Id., p. 23.

[16] Id., pp. 23-26.

[17] Id., pp. 28-30.

[18] Id., pp.36-38.

[19] Medico Legal Report; Records, p. 7.

[20] In the testimony of accused-appellant, Fabiola Lamiloho was also referred to as Fabiola Mameloco, a cousin of complaining witness' maternal grandmother.

[21] TSN, 14 august 1997, p. 4.

[22] Id., p. 18.

[23] TSN, 20 November 1997, p. 3.

[24] Id., pp. 4-5.

[25] TSN, 5 February 1998, p. 3.

[26] Id., p. 17.

[27] Id., p. 6.

[28] Id., pp. 9-11.

[29] Ibid.

[30] TSN, 9 December 1997, p. 11.

[31] Id., p. 12.

[32] Id., pp. 12-13.

[33] Decision penned by Judge Bartolome M. Fanuñal, RTC-Br. 25, Iloilo City.

[34] Rollo, p. 62.

[35] TSN, 16 October 1997, p. 29.

[36] Id., p. 30.

[37] TSN, 7 November 1997, p. 14.

- [38] Rollo, p. 64.
- [39] Id., p. 65.
- [40] Id., p. 66.
- [41] Id., p. 48.
- [42] TSN, 16 October 1997, p. 20.
- [43] Id., p. 26.
- [44] Rollo, p. 149.
- [45] People v. Historillo, G.R. No. 130408, 16 June 2000.
- [46] People v. Campaner, G.R. Nos. 130500 and 143834, 26 July 2000, citing People v. Lianda, G.R. No. 134084, 4 May 2000.
- [47] People v. Dalafu, G.R. No. 127156, 31 July 2000.
- [48] People v. Abad, G.R. No. 114144, 13 February 1997, 268 SCRA 246, People v. Historillo, G.R. No. 130408, 16 June 2000, citing People v. Antipona, G.R. No. 119071, 19 June 1997, 274 SCRA 328.
- [49] People v. Rabosa, G. R. No. 119362, 19 June 1997, 273 SCRA 142.
- [50] People v. Diasanta, G.R. No. 128108, 6 July 2000.
- [51] People v. Mosqueda, G.R. Nos. 131830-34, 3 September 1999, 313 SCRA 694.
- [52] People v. Castillo, G.R. No. 130205, 5 July 2000.
- [53] People v. Escobar, G.R. Nos. 122980-81, 6 November 1997, 281 SCRA 498.
- [54] TSN, 5 February 1998, p. 22.
- [55] People v. Gementiza, G.R. No. 123151, 29 January 1998, 285 SCRA 478.
- [56] People v. Alcala, G.R. Nos. 127023-25, 19 May 1999, 307 SCRA 330.
- [57] TSN, 16 October 1997, p. 3.
- [58] G.R. No. 126092, 29 July 1999, 311 SCRA 122.
- [59] G.R. No. 133146, 28 March 2000.
- [60] G.R. No. 131472, 28 March 2000.
- [61] G.R. No. 124129, 28 January 2000.
- [62] G.R. Nos. 131167-68, 23 August 2000.
- [63] G.R. No. 127356, 29 June 1999, 309 SCRA 362.
- [64] G.R. No. 134266, 15 September 2000.
- [65] See Note 33.
- [66] TSN, 5 February 1998, pp. 14-17.

[67] See *People v. Silvano*, Note 63.

[68] *People v. Torio*, G.R. Nos. 132216 and 133479, 17 November 1999, citing *People v. Dimapilis*, G.R. Nos. 128619-21, December 1998, 300 SCRA 279.

[69] 1991 according to the accused himself.

[70] TSN, 16 October 1997, pp. 6-7.

[71] See Note 69.

[72] TSN, 9 December 1997, pp. 6-7.

[73] *People v. dela Cruz*, G.R. Nos. 131167-68, 23 August 2000.

[74] *People v. Gonzales*, G.R. No. 133859, 24 August 2000.

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