

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEJANDRO GUNTANG Y GAPOS, ACCUSED-APPELLANT.

G.R. Nos. 135234-38. March 08, 2001

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PER CURIAM:

Alejandro Guntang was found guilty by the Regional Trial Court (Branch 46)[1] of Urdaneta, Pangasinan, of raping his 15-year-old daughter Lizabeth Guntang on five occasions. He was sentenced by the trial court to suffer the death penalty for each count.[2]

The five informations filed against the accused by Assistant Provincial Prosecutor Marcelo C. Espinosa read:

"CRIM. CASE NO. U-9560

"That on or about 11:00 o'clock in the morning of November 24, 1997 at Brgy. Casantaan, Urdaneta, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a bladed weapon by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with LIZABETH GUNTANG y Domingo, a minor 15 years of age and accused' legitimate daughter against the latter's will and without her consent, to her damage and prejudice.

'CONTRARY to Article 335 of the Revised Penal Code, as amended by R.A. 7659 and R.A. 8353.'"

"CRIM. CASE NO. U-9561

"That on or about 11:00 o'clock in the evening of November 24, 1997 at Brgy. Casantaan, Urdaneta, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a bladed weapon by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with LIZABETH GUNTANG y Domingo, a minor 15 years of age and accused' legitimate daughter against the latter's will and without her consent, to her damage and prejudice.

'CONTRARY to Article 335 of the Revised Penal Code, as amended by R.A. 7659 AND R.A. 8353.'

"CRIM. CASE NO. U-9562

"That sometime on the month of December, 1997, at Brgy. Casantaan, Urdaneta, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a bladed weapon by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with LIZABETH GUNTANG y Domingo, a minor 15 years of age and accused' legitimate daughter against the latter's will and without her consent, to her damage and prejudice.

'CONTRARY to Article 335 of the Revised Penal Code, as amended by R.A. 7659 AND R.A. 8353.'

"CRIM. CASE NO. U-9563

"That sometime on the month of January, 1998 at Brgy. Casantaan, Urdaneta, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a bladed weapon by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with

LIZABETH GUNTANG y Domingo, a minor 15 years of age and accused' legitimate daughter against the latter's will and without her consent, to her damage and prejudice.

'CONTRARY to Article 335 of the Revised Penal Code, as amended by R.A. 7659 AND R.A. 8353.'

"CRIM. CASE NO. U-9564

"That sometime on the month of February 14, 1998, at Brgy. Casantaan, Urdaneta, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a bladed weapon by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with LIZABETH GUNTANG y Domingo, a minor 15 years of age and accused' legitimate daughter against the latter's will and without her consent, to her damage and prejudice.

'CONTRARY to Article 335 of the Revised Penal Code, as amended by R.A. 7659 AND R.A. 8353.'"[3]

The Solicitor-General narrates in the People's brief the factual circumstances that led to conviction of Guntang by the trial court.

"I. CRIM. CASE NO. U-9560

"Lizabeth Guntang is a fifteen year old girl who lived with her siblings and their parents, Alejandro and Rosita Guntang at Casantaan, Urdaneta, Pangasinan (TSN, June 10, 1998, pp. 2, 4-5). On November 24, 1997 at about 11:00 o'clock in the morning, Lizabeth was inside the room of their nipa hut taking care of her brother Adriano when she was called by her father, Alejandro (Ibid., 7-8). She left her brother on the hammock inside the bedroom and descended the two steps to where her father was (Ibid., 8-9).

"Upon reaching her father, she was ordered to lie on the 'papag' which he used as a bed. When Lizabeth asked why she was being ordered to lie down, Alejandro merely reiterated his order. Lizabeth obeyed and laid down on the 'papag' (Ibid., p. 10). With a bolo in hand, Alejandro laid beside Lizabeth and forcibly removed her blouse. Lizabeth objected but Alejandro persisted. He removed her bra and held her breast and nipple (Ibid., pp. 10-11). Alejandro then removed Lizabeth's shorts and panty. Again, Lizabeth voiced her objections to no avail. Thereafter, Alejandro positioned himself on top of Lizabeth, held her two hands and forced his penis inside her vagina. This caused Lizabeth pain. Without taking heed of his daughter's pain, Alejandro began a push and pull movement. After some time, Lizabeth's brother began to cry. Lizabeth pushed at her father pleading with him to stop but he refused. Alejandro only stopped when he had satisfied his lust (Ibid., pp. 12-17). After the deed was done, Alejandro warned Lizabeth not to tell anybody what happened between them (Ibid., p. 17).

"II. CRIM. CASE NO. U-9561

"At around 11:00 o'clock that evening (November 24, 1997), Lizabeth was already sleeping in their room with her mother and brothers and sisters when she was awakened by the call of her father (TSN, June 15, 1998, p. 3). She stood up and went down to her father. She found him drinking liquor, which he offered to her. She refused but was, nevertheless, forced to drink. She was then ordered to go to his bed. She complied because she was frightened when she saw her father holding a bolo. She sat down on the 'papag' which was being used by her father as his bed (Ibid., p. 4-5). Alejandro drank his liquor and then approached Lizabeth. After being forced to lie down on the bed, Alejandro began to touch her face and breast (Ibid., p. 5; June 16, 1998, p. 3). Lizabeth protested and told Alejandro that she did not like what he was doing. In turn, Alejandro threatened to punch her with his fist. He undressed her, touched her body and sucked her breast (June 16, 1998, pp. 3-4). Thereafter, he removed his shorts and brief, held her two hands, positioned himself on top of Lizabeth and forced his penis into her vagina. When Alejandro ejaculated he got off Lizabeth (Ibid., pp. 5-6). She then put on her clothes (Ibid., p. 7). Alejandro did the same and threatened to kill Lizabeth, her mother and her siblings if she told anyone of what transpired between them (Ibid., pp. 7-8). Lizabeth then went back to lie to the room to lie down. She was, however, not able to go back to sleep (Ibid., pp. 8-9).

"III. CRIM. CASE NO. U-9562

"On December 24, 1997 at about 12:00 o'clock midnight, Alejandro laid down beside Lizabeth who was sleeping with her brothers and sisters. While holding a bolo, he woke her up and warned her not to shout. Knowing what was about to happen, Lizabeth protested (TSN, June 23, 1998, p. 4-5). Alejandro took no heed of the protest and undressed Lizabeth. He took hold of her hand and inserted his penis into her vagina (Ibid., p. 5). He began to make a push and pull movement. After a while he stopped and got off Lizabeth only to get on top of her again and force himself on Lizabeth (Ibid., p. 6). Lizabeth felt her father discharge his semen. He then returned to his bed. Lizabeth changed her clothes and began to cry. Her father warned her to stop crying or else he would box her (Ibid., pp. 7-9). She eventually went to sleep (Ibid., p. 9).

"IV. CRIM. CASE NO. U-9563

"At about 11:00 o'clock in the evening sometime in the month of January 1998, Lizabeth was studying inside the room where she slept with her mother and brothers and sisters (TSN, July 2, 1998, p. 3). Alejandro called her to come down. When she obeyed, she was brought to her father's bed. She was pushed to lie down on the bed together with Alejandro. Alejandro removed her clothes and kissed and touched her body (Ibid., pp. 4-5). When Lizabeth pushed her father away, he boxed her. Alejandro then removed his clothes, went on top of Lizabeth and inserted his penis inside her vagina and had sexual intercourse with her. When he was done, Alejandro took hold of her dress and told her to stay. After dressing up, Lizabeth asked permission to go back to the room where she slept (Ibid., pp. 6-8).

"V. CRIM. CASE NO. U-9564

"On February 14, 1998, at about 11:00 o'clock in the evening, Lizabeth was sleeping in their room with her mother and brothers and sisters. She was awakened by the call of her father. When she answered, she was ordered to go down and give him a massage. Alejandro threatened to hurt her if she did not obey. Lizabeth went down and approached her father and saw a bolo beside him (TSN, July 6, 1998, pp. 3-5). When she asked why she was being called, Alejandro pulled her and made her lie down beside him. He told her not to make a sound and then undressed her. He kissed her body and placed himself on top of her (Ibid., pp. 5-7). Alejandro lowered his briefs up to his thighs then forced his penis inside her vagina. He again had sexual intercourse with her. When Alejandro had finished, Lizabeth dressed up and asked permission to urinate outside the hut (Ibid., pp. 8-9).

"When she got out, Lizabeth hid by the bamboo grove until she was sure that her father did not follow her. She then went to her grandmother, Felicitas Domingo, to whom she narrated what her father had done to her. (Ibid., pp. 9-10) The next morning, they sought the help of a Kagawad of the barangay who accompanied them to the police station where they reported the crime committed against Lizabeth (TSN, July 20, 1998, pp. 3-4).

"The medical examination conducted on Lizabeth by Dr. Noel Obedoza revealed a ruptured hymen with lacerations at 1, 5, 7 and 9 o'clock positions (TSN, May 21, 1998, pp. 2, 5)."[4]

Alejandro Guntang reiterates before this Court his claim of innocence of the charges and his defense of alibi. His story -

"x x x (O)n November 24, 1997, the accused Alejandro Guntang left their house at 6:30 a.m. and went to the rice field (TSN, August 3, 1998, p. 3). He returned around 1:10 in the afternoon. He ate and rested for awhile, and then went back to the rice field. At around 5:30 in the afternoon, he returned home. On the other hand, the victim arrived home at 6:00 p.m. The accused asked why she arrived late and Lizabeth answered in a loud voice, which he resented and he whipped her (TSN, August 3, 1998, p. 6). They ate supper at around 7:30 p.m. after which they went to sleep. Nothing unusual happened that night.

"On December 24, 1997, the accused was at home from 7:00 o'clock in the morning to 12:00 o'clock noon (TSN, August 4, 1998, p. 8). At 1:00 o'clock in the afternoon he went to the ricefield and stayed there up to

4:30 in the afternoon, after which, he went home. At around 11:00 o'clock in the evening the entire family was already sleeping and nothing unusual happened that night (TSN, August 4, 1998, p. 3).

"During the month of January 1998, there was no untoward incident that happened and the relationship between the family members was cordial and peaceful (TSN, August 4, 1998, p. 4).

"In the morning of February 14, 1997, the accused was at home and in the afternoon he went to the ricefield to visit his plants and stayed there up to 5:30 in the afternoon.

"In the afternoon at around 6:00, he requested the victim to cook their food and she answered: 'I am not your servant why are you ordering me to cook food' (TSN, August 4, 1998, p. 6). He resented the way she answered him and whipped her buttock. He admonished her that if she does not want to be advised, she better leave their house.

"The victim went upstairs to prepare their bedding at around 10:30 in the evening. His wife woke up to feed their baby and she found that the victim was not in bed. He instructed his wife to look for the victim at his mother-in-law's house. She went to the said house and found the victim talking with his mother-in-law (TSN, August 4, 1998, p. 8). From that time, the victim never returned home."[5]

Rosita, the accused's wife and the mother of the complainant, corroborated the testimony of her husband. According to her, she was at home on the various dates when the rapes were supposedly committed and she did not notice any unusual event in their household. She maintained that their family life was harmonious and that her husband was a good man and incapable of the crimes imputed to him.

The court a quo, not convinced by the defense urgings, convicted Guntang in its decision of 14 August 1998; it thereby adjudged:

"WHEREFORE, the Court finds ALEJANDRO GUNTANG guilty beyond reasonable doubt of INCESTUOUS RAPE aggravated by relationship where the victim is below 18 years old under Article 335 of the Revised Penal Code, in relation to Republic Act 7659 and the Court sentences ALEJANDRO GUNTANG, as follows:

"1.

In CRIM. CASE NO. U-9560, to suffer the penalty of DEATH. To indemnify Lizabeth Guntang the sum of P50,000.00 as moral damages and another sum of P20,000.00 as exemplary damages;

"2.

In CRIM. CASE NO. U-9561 to suffer the penalty of DEATH. To indemnify Lizabeth Guntang the sum of P50,000.00 as moral damages and another sum of P20,000.00 as exemplary damages;

"3

.In CRIM. CASE NO. U-9562 to suffer the penalty of DEATH. To indemnify Lizabeth Guntang the sum of P50,000.00 as moral damages and another sum of P20,000.00 as exemplary damages;

"4.

In CRIM. CASE NO. U-9563 to suffer the penalty of DEATH. To indemnify Lizabeth Guntang the sum of P50,00.00 as moral damages and another sum of P20,000.00 as exemplary damages;

"5.

In CRIM. CASE NO. U-9564 to suffer the penalty of DEATH. To indemnify Lizabeth Guntang the sum of P50,000.00 as moral damages and another sum of P20,000.00 as exemplary damages."[6]

Bewailing his conviction in this automatic review, accused-appellant Guntang would have the trial court faulted for relying on the testimony of Lizabeth.

In the review of death penalty cases, the Court keeps in mind, like always, that there can be no stake greater and no penalty more severe than the termination of a human life. Most unfortunately for accused-appellant, a painstaking study of the records has revealed no serious flaw in the testimony of the complainant nor in the conclusions reached by the trial court.

Recited in full, hereunder, is the testimony plainly given by Lizabeth at the witness stand.

"FISCAL MENESES:

[O]n said date, November 24, 1997 in the morning at approximately 11:00 o'clock A.M., where were you at that time, Madam Witness?

"A I was in the second floor of our house sir.

"Q What were you doing then?

"A I was taking care of my little brother, sir.

"COURT:

What is the occupation of your father?

"A He is a farmer, sir.

"Q About your mother?

"A She is a mango fruit picker, sir.

"COURT: Go ahead.

"FISCAL MENESES:

"Q Was there an unusual incident or event that took place on you on said date and time?

"A There was, sir.

"Q What was that incident all about, Madam Witness?

"A My father raped me, sir.

"Q How did this happen?

"A While I was taking care of my younger brother, he called on me, sir.

"Q Who is this younger brother that you were taking care of that time?

"A Adriano, sir.

"Q After calling you, what happened next?

"A He called me and he put his organ to my organ, sir.

"Q Where was your father when he called you?

"A Downstairs, sir.

"Q Are you trying to say to us that your house consists of first and second floors?

A Yes, sir.

"COURT:

While attending to your brother Adriano, you said your father called you, is that correct?

"A Yes, sir.

"Q Where was your father when he called you?

"A He was downstairs, sir.

"Q How did he call you?

"A He said, 'Beth, come here.'

"Q Did you follow his order?

"A Yes, sir.

"Q Did you go to the first floor?

"A Yes, sir.

"Q With your little brother, Adriano?

"A No, sir.

"Q Where did you leave Adriano?

"A In the hammock, sir.

"Q When you went downstairs, what else happened?

"A He ordered me to go to his bed, sir.

"Q

His bed, is it in a room?

"A It is not a room, sir.

"Q When he ordered you to go to his bed, did you comply?

"A

I asked, 'Why, father?' He said, 'Just lie down there.'

"COURT:

Go ahead Fiscal.

"FISCAL MENESES:

You said that your father ordered you to lie down on the bed, can you describe the bed, Madam Witness?

"A

'Papag' (wooden bed), sir.

"Q And did you comply with such an order for you to lie down on the bed 'papag' by your father?

"A 'Why father?' I asked. He said, 'Just lie down there.'

"Q Did you comply with what he said?

"A Yes, sir.

"Q When you were lying down on the bed 'papag' what happened next?

"A He followed, sir.

"Q When he followed, what did you observe in him?

"A He followed with a bolo and then he laid down beside me, sir.

"Q

When he laid down beside you, what happened next?

"A He undressed me, sir.

"Q How did he undress you, what piece of clothing was first taken off, if there was any?

"A My upper dress, sir.

"Q

When he was taking off your upper dress what did you do?

"A I asked my father, 'What are you doing to me?' My father told me, 'Do not shout.'

"Q Was your father able to remove your upper dress or shirt?

"A I prevented him to remove my upper dress but he forced to remove it, sir.

"Q What happened next, Madam Witness? (Before the witness could answer)

"COURT:

After removing your blouse, what else did your father do?

"A He held my breast sir.

"Q With your bra or without bra?

"A With bra, sir.

"Q Did he remove your bra?

"A He moved upwards, sir.

"COURT:

Go ahead.

"FISCAL MENESES:

After he moved upwards your bra fondled your breast, what else did your father do, if any Madam Witness?

"A He held my nipples, sir.

"Q After he did that, what else did he do?

A He removed my lower garment, my shortpants, sir.

"Q At that time, what were you doing when he was removing your shortpants, Madam Witness?

"A I told my father, 'I do not like,' but he forced me, sir.

"Q Was he able to remove your short pants that you were wearing?

"A I tried to prevent it but he forced to remove it, sir.

"Q Where was your father situated lying down beside you, to your right or to your left, madam Witness?

"A He was on my right side, sir.

"Q After he removed your short pants, what else did he do, if any?

"A He removed my panty, sir.

"Q What did he do next after removing your panty, Madam Witness?

"A He put his organ to my vagina, sir.

"Q

What was your reaction, Madam Witness, when he was doing that to you?

"A I told my father, 'I do not like to do it.' I told him to remove it.

"COURT:

Did he remove his penis?

"A He does not like to remove it, sir.

"Q Instead of removing, what did he do?

"A He got the bolo and placed on my neck and that was the time when I did not resist.

"Q No, my question is, instead of removing his penis, what did he do?

"A

He continued, sir.

"Q What did he continue?

"A He continued raping, me, sir.

"Q What does raping mean, by what means?

"A He continued raping me, sir.

"Q Instead of removing his penis what did he do?

"A He continued raping me, sir.

"Q How?

"A

What I mean when I said, he continued raping me, is that, his organ was placed in my organ, he continued placing his organ in my organ and in the process he was on top of me side by side my head kissing me.

"Q How long did your father do this to you at that instance?

"A Half an hour, sir.

"Q While he was doing that, his organ placed inside your organ, what else did he do to you?

"A He played by breast together with my nipple, sir.

"Q After about more or less 30 minutes, what else did your father do, if any?

"A He even sucked my nipple, sir.

"Q After doing all of these, what happened next, if any?

"A He continued on placing his organ to my organ, sir.

"COURT:

What happened to your organ?

"A Painful, sir.

"COURT:

Go ahead.

"FISCAL MENESES:

"Q So after, as you testified, more or less 30 minutes of doing these to you, raping you, what else happened?

"A No more, sir, because at that time, my younger brother whom I was taking care was already crying.

"Q When your younger brother was already crying, your father was still on top of you correct?

"A Yes, sir.

"Q And after you heard your little brother crying, what else did your father do, if any?

"A I told my father that my younger brother was already crying, but he insisted to be on top of me, sir.

"Q How long did he insist to be on top of you despite your brother was already crying?

"A A little bit long, sir.

"Q After that, what else happened, if any?

"A

I was pushing him because my younger brother was already crying but he does not like to move on top of me, sir.

"Q Did he ever stop doing this to you, Madam Witness?

"A Yes, sir.

"Q Did he stop?

"A Yes, sir.

"Q What made him stop?

"A I do not know, sir.

"Q After your father did these to you, what other answer or words did he say if any?

"A My father warned me not to tell everything. If I will reveal it, he will kill us all.

"xxx xxx xxx

"COURT:

You claimed that your father continued placing his organ in your organ, how did he do it?

"A He held my two hands and then forced his organ to be placed in my organ, sir.

"Q What else did he do while his organ was in your organ?

"A He made a push and pull movement, sir.

"COURT:

Go ahead.

"FISCAL MENESES:

I just want to manifest, your Honor, that while the witness is answering questions propounded to her, she is on the verge of crying. In fact she is now crying, your Honor.

"COURT:

While your father was making a push and pull movement, while his organ is in your organ, what happened to your organ?

"A

While the organ of my father was placed in my organ making a push and pull movements I felt pain in my organ, sir.

"Q The question is, what happened to your organ?

"A Something came out from his organ, sir.

"Q What is that something?

"A I do not know, sir.

"Q That something that came out from his organ, was it fluid or solid?

"A Fluid, sir.

"Q What is the color?

"A White, sir.

"Q Where did it come from, that white fluid?

"A

When he stood up and put on my panty, I saw that white substance in my panty, sir."[7]

"Q When was the last time that he raped you after November 22?

"WITNESS:

"A

In the night sir.

"Q Of what date?

"A In the night of November 24, 1997, sir.

"COURT: Go ahead, on that.

"PROS. MENESES:

"Q Approximately what time was this on the night of November 24, 1997?

"WITNESS:

"A

11:00 o'clock in the evening, sir.

"Q What were you doing then?

"A I was sleeping sir.

"Q Where [were] you sleeping then?

"A Upstairs sir.

"Q Who are your companions when you were sleeping upstairs of your house?

"A My brothers and sisters together with my mother sir.

"Q While you [were] sleeping, what happened?

"A I heard somebody calling [for] me sir.

"Q And who was calling you at that time?

"A I heard the voice of my father sir.

"Q Is this your father Alejandro Guntang the same accused in this case Alejandro Guntang?

"A Yes sir.

"Q Where was your father located when he was calling you at that time?

"A He was downstairs sir.

"Q Can you tell us what exactly did you hear when he was calling you at that time?

"A

I heard, 'Beth, Beth, umay kadtoy ta adda ibagac,' which means, 'Beth, Beth, come here, I will tell you something.'

"Q What did you do after hearing the call of your father?

"A I went to his place sir.

"Q

What was your father doing when you went to his place?

"A He was drinking liquor sir.

"Q And what did you do upon reaching his place?

"A

He offered and forced me to drink wine but I refused to drink, sir.

"xxx xxx xxx

"Q After that what happened next?

"A He ordered me to go to the place where he was sleeping but I refused sir.

"xxx xxx xxx

"Q After reaching the papag bed, what did you do there?

"A I followed his order, I sitted at the side of the bed and he ordered me to lie down, sir.

"Q Why did you follow the order of your father to lie down on the wooden bamboo bed?

"A I was afraid because my father is holding a bolo at that time.

"Q And then when you are sitting at the side of the papag, what did your father do next.

"A He [drunk] the wine and then followed me at the bamboo bed.

"Q

And what did he do next?

"A He went up to the bamboo bed sir.

"Q And then what did he do to you?

"A He laid down sir.

"Q And what did he do to you next?

"A He touche[d] me on the face sir.

"Q

The place where you are sleeping is just upstairs from where the papag is, did you not try to go back where you are sleeping to keep away from your father at that time?"[8]

"A I am afraid because my father has [a] bolo, sir.

"Q Why are you afraid to go back to the place where you were sleeping when he has a bolo?

"A He might kill me, sir.

"Q Why do you say that your father might kill you?

"A Yes, sir, because if I will not comply with his request he will kill me.

"Q Now, going back to the wooden papag when your father was touching your breast, what did you do if any?

"A

I told my father, I don't like what you are doing to me.

"Q After telling that to your father what did he do next?

"A My father attempted to box me with his fist blow, sir.

"Q And what else did your father do after he threatened to box you?

"A He continued his desire and undressed me, sir.

"xxx xxx xxx

"Q After removing your bra and pants what happened next?

"A He touched almost all parts of my body and sucked my nipple, sir.

"Q And afterwards what else did he do Madam Witness?

"A He removed my panty, sir.

"Q And what happened next after removing your panty?

"A He removed his pants and brief and went on top of me, sir.

"Q How about on your part what did you do when your father was removing your panty?

"A I tried to prevent him in removing my panty, sir.

"Q Did he succeed in removing your panty?

"A Yes, sir, because he grabbed and pulled it down.

"Q After your father pulled and grabbed your panty down, what else did he do?

"A He removed his pants and removed his brief, sir.

"Q

And then what happened next?

"A He went on top of me, sir.

"Q Why did he went on top of you?

"A He will rape me again, sir.

"COURT: What did he do while on top of you?

"A He held my two (2) hands and then inserted his organ to my vagina, sir.

"PROSECUTOR MENESES:

After inserting his organ into your vagina what else did your father do to you?

"A He loosened my hands and touched my breast again, sir.

"Q What else, while doing these touching your breasts and holding your hands what else did your father do to you?

"A He was sucking my nipples, sir.

"Q Did your father just inserted his organ and nothing else?

"A He did the push and pull movements, sir.

"Q For how long did your father do the push and pull movements?

"A A little bit long, sir, I cannot calculate.

"Q

Why do you say that there was a push and pull movements which was done on you?

"A

At the time when he inserted his penis in my organ that was the time he did the push and pull movements, sir.

"Q

After that what happened?

"A After doing the push and pull movements, he moved out from my top, sir.

"Q What do you mean by that?

"A When something came out from him, from his penis he went down on top of me, sir.

"Q What did he do next?

"A

After something came out from his penis he put on his pants and briefs and went back to the place where he was drinking wine, sir.

"xxx xxx xxx

"Q What did he do next if any?

"A

He told me that if I will reveal what we have done because if I will tell this to anybody he will kill me, sir."[9]

"Q x x x When did this third incident of rape occurred or happened?

"A What I can remember was in the month of December, sir.

"Q Give me a particular date if you can still remember when did this rape happened for the third time?

"A Before Christmas, sir.

"COURT:

Is it immediately before Christmas or sometime before Christmas?

"A December 24 at 12:00 midnight, sir.

"Q December 24, 1997 at 12:00 midnight?

"A Yes, sir.

"PROSECUTOR MENESES:

And where were you on December 24, 1997 at around 12:00 in the evening?

"A We were upstairs our house, sir.

"Q It is of judicial knowledge that December 24 is Christmas Eve were you having any celebration that time?

"A None, sir.

"Q And therefore what were you in particular doing on said date and time?

"A I was taking care of my younger brothers and sisters?

"Q While you were taking care of your brothers and sisters was there any unusual incident that happened?

"A There was, sir.

"Q

What was that unusual incident?

"A When my younger brothers and sisters were asleep my father came and stayed near me again, sir.

"Q Why did your father came near you?

"A He will do what he had done before, sir.

"Q Did your father say in particular to signify his intention?

"A Yes, sir.

"Q Kindly recall and tell this Honorable Court what exactly your father told you?

"A My father told me that don't shout and after telling me that, he again touched my breast, sir.

"Q What did you answer or say to him when he said that to you, not to shout?

"A I told him that I don't like anymore, sir.

"Q Why do you said that you don't like it anymore?

"A Because I don't want that it will be repeated again, sir.

"Q

Are you referring to the two (2) incidents that you testified to here in Court that happened on you, on November 24, 1997 not to be repeated that again, Lizabeth?

"A Yes, sir.

"Q Despite that answer to your father what else did your father do to you aside from touching your breast?

"A I refused but he insisted [in] undressing me, sir.

"Q And what did your father do next if any?

"A

I said, when he was undressing me, 'no more father,' but he pushed me and continued on undressing me, sir.

"Q Was your father able to undress you completely that time?

"A Yes, sir.

"Q After your father was able to undress you completely what did your father do if any?

"A He removed his shortpants, sir.

"Q And then what happened next?

"A He held my two hands at the level of my head and then he went on top of me, sir.

"Q

While he was still removing his shortpants did you not try to run away and fight?

"A No, because I [was] afraid, sir.

"Q Why are you afraid?

"A Because everytime he uses me he has with him a bolo, sir.

"Q And then when he succeeded in going on top of you what did he do next?

"A When he held my hands he tried to insert his penis into my vagina, sir.

"Q Was he able to insert his penis?

"A Yes, sir.

"Q While inside what happened next?

"A He did the push and pull movements, sir.

"Q What were you doing or saying that time?

"A

I plead to my father to remove his penis from my vagina but he does not like to remove, sir. (Witness when testifying is crying).

"Q And after that what happened?

"A After he unloosened my hands he again sucked my nipples, sir.

"Q After that what did your father do if there is still anything that happened?

"A He continued on making the push and pull movements, sir.

"Q Then after he made the push and pull movements what did he do next?

"A

He stopped for a while and returned back on top of me, sir.

"Q Are you trying to say that he went down on top of you and then he returned back?

"A He just went down from my top and then later he went back on my top, sir.

"COURT:

But before he made that push and pull movements before he went back what did he do?

"A After touching my breast then he did the push and pull movements again, sir.

"Q What were involved in the push and pull movements?

"A Because the penis was inserted in my organ, sir.

"COURT:

Go ahead, Fiscal.

"PROSECUTOR MENESES:

Prior to your father going back on top of you, did he utter anything on you in that occasion?

"A He told me not to report the matter, sir.

"Q And for the second time that he did the push and pull movements on you?

"A He did not utter anything anymore, sir.

"Q How long did your father [make] these push and pull movements on you for the second time?

"A Up to the time that something came out form his penis and then he went down on my top, sir.

"Q Do you know what is this that came out form his penis?

"A I don't know what is that, sir.

"Q Why do you say that there was something that came out from his penis, did you see it or feel it?

"A I felt it, sir.

"Q After feeling that something came out what did your father do if any?

"A After something came out from his penis or exhausted, he went down on my top, sir.

"Q He just lay down beside you or went down your house?

"A

He went down on my top and stayed at my side and because my mother was not around he went to the place where they sleep with my mother, sir ."[10]

"PROS. MENESES:

"Q So this 4th incident where this 4th incident happened?

"A Inside our house.

"Q And you can remember the date?

"A I cannot remember, sir.

"Q Can you at least recall what month was it?

"A I can remember sir.

"Q When was that?

"A January, sir.

"Q What year?

"A 1998, sir.

"Q What time or day did your father raped you for the 4th time?

"A 11:00 o'clock night, sir.

"Q What were you doing that time?

"A I was reading that time.

"Q When you were reading what did your father do to you if any?

"A He called me.

"Q Where was your father when he called you?

"A Downstairs, sir.

"Q Who were with you at that time when your father called you?

"A My mother together with my brothers and sisters.

"Q And what were they doing at that time?

"A My brothers and sisters together x x x were already asleep.

"Q And when your father called you what did you do?

"A I asked my father what he wanted but he told me just come here.

"Q And when he said just come here what did you do next?

"A I went to him, sir.

"PROS. MENESES:

"Q Upon going to your father what did your father do next, if any?

"A I was brought to the place where he was sleeping and then he brought me up at the bed where he sleep.

"Q

You testified already as to the description of his bed is this the same bed located at the lower portion of your house?

"A Yes, sir.

"Q

When your father directed you to go to that particular place where he sleep what happened next when you reached that papag?

"A My father pushed me forward and then he lied down near me.

"Q What were you wearing at that time?

"A I was wearing short pant and t-shirt, sir.

"Q

You are also wearing your panty underneath your shortpant?

"A Yes, sir.

"Q How did your father made you lie down both of you?

"A He [held] my shoulder with the act of his both hands and the he made me lie down.

"Q

After that what else happened?

"A He touche[d] my body and I told my father I do not like.

"Q Is your father also wearing his own clothes?

"A Yes, sir.

"Q What was his attire that time?

"A Wearing his shortpants, sir.

"Q How about t-shirt was a shirt on him?

"A Wearing a sando.

"Q As you said your father pushed you down and started to touch your breast what did you do, if any?

"A I told him I do not like but he raised my upper dress up.

"Q

Despite the fact that you resisted by praying that you do not like what what he was doing what else did your father do next after that?

"A

He removed my upper dress together with my bra then removed my short pants together with my panty then he sucked my nipple.

"Q What did you do while he was doing that?

"A

I am pushing him but he boxed me and I told him stop it father!

"Q But your father did not stop despite the fact that you are pushing him?

"A He did not stop.

"Q Why did he not stop although you are already pushing him and trying to show that you do not like what he was doing?

"A Because he insisted what he is doing to me.

"Q After he was able to remove your short pant and panty at that time you are already naked?

"A Yes, sir. And when I was naked he suck my nipple.

"Q After that what else happened?

"A He removed his short pants and prevented my legs from walking by holding the ankle on my legs.

"Q Where was your father when he was holding your ankle in relation to the papag?

"A He was besides me, sir.

"Q What did your father do next?

"A He told me to lie down there.

"Q Then what happened next?

"A Then he undressed.

"Q After your father removed his shortpants what did he do next?

"A He went on top of me, sir.

"Q And what did he do when he was on top of you?

"A He [held] my vagina.

"Q

What else did he do?

"A Then he inserted his penis to my vagina.

"Q How did your father inserted his penis to your vagina?

"A He spread my vagina and inserted his penis.

"Q When your father inserted his penis into your vagina what else happened?

"A He [did] the push and pull movement.

"Q By the way, why are you sure that your father inserted his penis to your vagina?

"A Because I feel pain when his penis was inserted into my vagina.

"Q For how long did your father do this push and pull movement on you?

"A Six times that he [did] the push and pull and then he sucked my nipple again.

"Q All the while what are you doing when he was doing the push and pull movement?

"A I was pushing him but he insisted.

"Q After this what did your father do next?

"A He kissed my face, sir.

"Q Was there any words uttered by your father was kissing your face?

"A None, sir.

"Q After kissing you what did you do next?

"A When his lips were removed from my lips he continued making the push and pull movement again.

"Q

Do you want to tell the honorable Court that he first made the six times push and pull movement and then while on top of you again then do again another push and pull movement on you?

"A He did not get down from my top.

"Q How did you feel while your father did the push and pull movement on you?

"A Painful, sir.

"COURT:

"Q After the push and pull movement what happened next?

"A He kissed me.

"Q After that what happened next?

"A When something came out from him he went down on top of me.

"Q

What is that something that came from him?

"A I do not know, sir.

"Q Can you not tell us if that something is fluid, liquid or solid?

"A Is like fluid.

"Q What does it look?

"A White, sir.

"Q White fluid came out from where?

"A From his penis."[11]

"A February 14, 1998 sir.

"Q Where did this incident happen?

"A Inside our house sir.

"Q Where were you inside the house on said date and time?

"A About 11:00 o'clock in the evening, sir.

"Q And specifically in the house where were you at that time and date?

"A I was at the second floor, sir.

"Q It was already 11:00 o'clock in the evening, what were you doing then?

"A I was sleeping sir.

"Q Who are your companions in that room while sleeping?

"A

My mother, together with my brothers and sisters, sir.

"Q While you [were] sleeping together with your brothers and sisters, what did you observe, what happen[ed]?

"A I was then awaken, my father calling me, sir.

"Q Where was the calling of your father?

"A At the place where he slept, sir.

"Q Where is that place where he slept?

"A Downstairs sir.

"Q What did you do with that call by your father?

"A

When I told my father 'why' and he said, come here and massage me.

"Q What happened after you heard the call of your father?

"A When he insisted calling me, and then he told me if I will not come down he will go up and hurt me, sir.

"Q And so you are able to come down?

"A Yes sir.

"Q Is this the first request or that is always requesting you to massage him?

"A Yes sir.

"Q And when you are with him, what transpired next?

"A He told me that I will come up where he was sleeping and when I was there he pulled me, sir.

"Q Prior to the pulling of your father, what did you observe with your father?

"A I suspected that he will repeat what he had been doing to me, sir.

"Q What about his appearance, did you observe what was his suit?

"A There was sir.

"Q

What was that?

"A The bolo is besides him sir.

"Q And then he was able to pull you where he directed you?

"A When he pulled me, I asked him why, but he made me lie down sir.

"Q What did your father do next?

"A My father when I was lying down, he told me to keep silent sir.

"Q

Did you keep on silent?

"A No sir.

"Q What did you do to reveal, what was your father doing to you at that time?

"A I tried to push him but he raise his right hand with clenched fist to me, sir.

"Q Despite your protest, what did your father do next on you?

"A He forced to rape me again sir.

"Q And how did he manifest to show his force in raping you?

"A He touches my breast, sir.

"Q What were you wearing at that time?

"A Shortpants and T-Shirt sir.

"Q Your underwears are there on at that time?

"A Yes sir.

"Q About your bra?

"A Yes sir.

"Q After he touches your breast, what did he do next?

"A He put my hand besides my head and then he removed my upper dress, sir.

"Q What was your position after pulling your both hands?

"A I was pushing his hands that pulled my both hands, sir.

"Q You [were] lying down on the bamboo bed the same bamboo bed where your father sleeping?

"A Yes sir.

"Q And then in that bed, what happened next what did your father do next to you?

"A Then when he loose his hands of my hand, I pushed him but he insisted, sir.

"Q How was he able to remove your bra?

"A He pulled my bra right on my breast, sir.

"Q Having pulled your bra, what did your father do next?

"A Then he kissed my breast sir.

"Q What else did he do?

"A

Then he sucked my both nipple sir.

"Q What else did he do?

"A Then after sucking my nipples then he pulled down my shortpants, sir.

"Q And after that what did he do next?

"A I am preventing to pull my short pant down but he insisted in pulling it down, sir.

"Q And after your shortpant pulled down, what did your father do next, if any?

"A Then he removed also my panty, sir.

"Q How did he remove your panty?

"A

He pulled it down with his two (2) hands, sir.

"Q And what position were you when he was able to pull down your panty?

"A I was lying down sir.

"Q After he was able to remove all those things covering your private parts, what did your father do next?

"A Then he again kissed my body, sir.

"Q And then what happened next?

"A Then he went on top of me sir.

"Q And then what did he do to you?

"A Then he removed his pants sir.

"Q Then what did he do next?

"A He lowered his brief a little, sir.

"Q

Up to what part of his body or legs?

"A Up to the middle of the thigh, sir.

"Q And in that position, what did your father do next?

"A

Then he [held] my vagina and inserted his penis sir.

"Q How about your hands, what was the position when he inserted his penis to your vagina?

"A My right hand [was] on my breast and my other hand was being held by his hand, sir.

"Q Can you say to the Honorable Court if your father was able to insert his penis to your vagina?

"A Yes sir.

"Q Why do you say that he was able to insert his penis into your vagina?

"Q While the penis was inside your vagina, what did he do next?

"A He do the push and pull movement sir.

"Q While doing it, was there words uttered to you?

"A He did not say anything, sir.

"Q How about you, did you say anything to him?

"A Yes sir.

"Q What was that?

"A I plead to my father not to do that again but he told me, keep silent.

"Q After he did the push and pull movement, what happened?

"A He again sucked my nipples, sir.

"Q After making the push and pull movement on you and sucking your nipples, what else did your father do?

"A After sucking my nipples, then he continued the push and pull movement again, sir.

"Q How did this push and pull movement end?

"A When he do the push and pull something come out from his penis then he stopped, sir.

"Q This something that came out, is this the one that came out in the four (4) incident?

"A Yes sir,

"Q How do you say this is the same that came out in the four (4) incident?

"A Because the thing that came out are the same colored white, sir.

"Q After he stopped, what happened next?

"A He went back to the place where I was sleeping sir.

"Q About you?

"A I put on my clothes sir.

"Q And after that where did you proceed if any?

"A I asked permission that I go to urinate and he allowed me sir.

"Q

Did you go to urinate at that time?

"A

No sir, I did not go to urinate but instead I ran to the house of my grandmother, sir,"[12]

The Court is not persuaded by the defense claim that the series of rape incidents could not have happened without the other members of the family being made aware of it. A small living quarter has not been considered to be a safe refuge from a sexual assault. Copulation is known to occur despite the presence of other persons around.[13] The Court has once observed: "Considering the cramped space and meager room for privacy, couples perhaps have gotten used to quick and less disturbing modes of sexual congresses which elude the attention of family members; otherwise, under the circumstances, it would be almost impossible to copulate with them around even when asleep. It is also not impossible nor incredible for the family members to be in deep slumber and not be awakened while the sexual assault is being committed." [14] Still, in another case, [15] the accused tried to impugn the complainant's accusation of rape against him by pointing out the "environmental circumstances" involved, i.e., the two of them in the sala of the house with no less than eight people. This Court once again ruled against the argument and explained: "The crime of rape x x x has been known to be possible of commission even when the rapist and victim are not alone considering that, given the concomitant anxiety, the act can take only a short time to consummate. x x x A conviction for rape could still be proper despite the fact that it is alleged to have been perpetrated in the same room with the rapist's spouse or where other family members also sleep. x x x Lust, it has been said before, is apparently no respecter of time and place." The Court here reiterates those observations.

Guntang would contend that Lizabeth and her maternal grandmother nurtured ill feelings against him, which could well be, he stressed, the real motive behind the rape charges. Lizabeth, he added, had resented his whipping her on November 1997 when she came home late and on 14 February 1998 when she answered back after having been told to cook for him. He claimed to have had a fight with his mother-in-law, when he called her a "witch." The court a quo properly opined that the imputed motives were "too shallow" [16] to be believed. It would indeed be highly improbable for Lizabeth with no record of sexual perversity to fabricate a story against her own father

which could very well imperil his liberty or life.[17] It would take depravity for a young girl to concoct a story that could put her own father on death row and drag herself and the rest of her family to a lifetime of shame.[18] In *People vs. Lucas*,[19] this Court said: Even assuming that there existed some resentment on the part of the victim against the accused, it would nevertheless be hard to believe that a naive lass could be so motivated by feelings of revenge as to concoct a story of rape, and subject herself to the indignity of a public trial against her own father, if there was no truth to it. Neither would Lizabeth's grandmother be so callous as to instigate her granddaughter to file five counts of rape against her father simply on account of alleged resentment for being called a witch.

The initial silence of Lizabeth could be attributed to her age, the moral ascendancy of the accused and his threats against her life. Lizabeth was barely 15 years old when she was first raped by the accused. Procrastination by the victim in rape cases had seldom been taken to be an indication of a fabricated charge.[20]

Guntang tries to bolster his claim of innocence by raising the defense of alibi. The trial court has correctly rejected this defense. Against positive evidence, alibi becomes most unsatisfactory.[21] For it to be credible, the accused must not only prove his presence at another place at the time of the commission of the offense but must also demonstrate that it would have been physically impossible for him to be at the locus criminis at that time.[22] The evidence is bereft of any such indication.

Under Article 335 of the Revised Penal Code,[23] as amended by Section 11 of Republic Act 7659, simple rape is punishable by reclusion perpetua. Where, however, the offended party is under eighteen years of age and the offender is a parent of the victim, both qualifying circumstances being here aptly alleged in the informations, the penalty is increased to one degree higher, i.e., to the penalty of death.

The informations uniformly alleged that Lizabeth was 15 years old when raped, a matter likewise explicitly stated in her testimony and supported by her birth certificate -

"Q Please state your name, age and other personal circumstances?

"A Lizabeth Guntang, 15 years old, single, student, resident of Casantaan, Urdaneta, Pangasinan.

"xxx xxx xxx

"FISCAL MENESES:

How about your parents, what are their names?

"A Alejandro Guntang and Rosita Guntang, sir.

"Q Are they legally married to your own knowledge, Madam Witness?

"A

Yes, sir.

"COURT:

You said you are 15 years old, do you have proof?

"A Yes, sir.

"Q What is your proof?

"A Birth Certificate, sir.

"xxx xxx xxx

"Q On November 24, 1997 the date that your father raped you, how old were you at that time?

"A

14, sir."[24] (complainant's birthdate is on November 26, 1982 based on her birth certificate)

Guntang himself admitted at the witness stand to be the legitimate father of Lizabeth, a fact also attested to by his wife.

"ATTY. FLORENDO:

And who are the persons residing in your house on November 24, 1997?

"A My wife and my children sir.

"Q Namely: the children?

"A Lizabeth, Arjee, Angelica, Jackylin and Adriano, sir."[25]

"Q x x x (Y)ou will admit, Mr. Witness, that Rosita Guntang is your wife?

"A Yes, sir.

"Q In fact, you were married last September 13, 1979?

"A Yes, sir.

"xxx xxx xxx

"Q And out of your lawful marriage with Rosita Guntang you were blessed with ten children but one died, am I correct?

"A Yes, sir.

"Q

And for the period from November 24, 1997 up to February of 1998, you were living in your dwelling place with five out of your children, namely, Angelina, Jacqueline, Adriano, Arjay and Lizabeth, am I correct?

"A Yes, sir."[26]

"Q Madam witness, you will confirm the fact that you are lawfully married to the accused Alejandro Guntang?

"ROSITA GUNTANG:

Yes, sir.

"xxx xxx xxx

"Q

Out of this relationship, you were blessed of ten (10) children but one die, among these living children is one Lizabeth Guntang?

"A Yes sir.

"Q

Lizabeth Guntang is living with you in Brgy. Casantaan, Urdaneta, Pangasinan, with one dwelling with your husband in your house?

"A Yes sir."[27]

Four Justices of the Supreme Court maintain their position that Republic Act 7659, insofar as it prescribes the death penalty, is unconstitutional; nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty could thereby be imposed.

As to the monetary liability of accused-appellant, the amount of P75,000.00 as civil indemnity should be awarded to the complainant for each count of rape. The Supreme Court has ruled that if the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by law, the indemnity for the victim shall be increased to P75,000.00.[28] In addition, as well as in consonance with prevailing jurisprudence, the amount of P50,000.00 by way of moral damages must also be granted to the complainant for each count of rape. The fact that the rape victim has suffered the trauma of mental, physical, and psychological sufferings is too obvious to still require recital thereof at the trial by the victim; the Court assumes and acknowledges such agony on her part.[29] The award of exemplary damages is in order.

WHEREFORE, the decision of the Regional Trial Court of Urdaneta, Pangasinan, Branch 46, in Criminal Case Nos. 135234-38 finding accused-appellant ALEJANDRO GUNTANG Y GAPOS guilty beyond reasonable doubt of five counts of rape and imposing upon him the penalty of death for each count is **AFFIRMED** with the **MODIFICATION** that accused-appellant is also ordered to pay the complainant LIZABETH GUNTANG the sums of P75,000.00 as civil indemnity, P 50,000.00 as moral damages and P20,000.00 as exemplary damages, for each count of rape.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for the possible exercise of 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] Judge Modesto C. Juanson, presiding.

[2] Criminal Cases Nos. U-9560, U-9561, U-9562, U-9563, U-9564.

[3] Rollo, pp. 9-13.

[4] Rollo, pp. 142-148.

[5] Rollo, pp. 94-95.

[6] Rollo, Decision, pp. 49-50.

[7] TSN, June 10, 1998, pp. 7-16.

[8] TSN, June 15, 1998, pp. 2-5.

[9] TSN, June 16, 1998, pp. 3-7.

[10] TSN, June 23, 1998, pp. 3-8.

[11] TSN, July 2, 1998, pp. 3-7.

[12] TSN, July 6, 1998, pp. 3-9.

[13] *People vs. Ignacio*, 233 SCRA 1.

[14] *People vs. Sangil, Sr.*, 276 SCRA 539.

[15] *People vs. Escala*, 292 SCRA 48.

[16] *Rollo*, p. 47.

[17] See *People vs. Fuensalida*, 281 SCRA 452; *People vs. Dacoba*, 289 SCRA 265; *People vs. Bation*, 305 SCRA 253.

[18] See *People vs. Tabugoca*, 285 SCRA 312; *People vs. Magdato*, G.R. Nos. 134122-27, February 7, 2000.

[19] 181 SCRA 316.

[20] *People vs. Escala* 292 SCRA 48.

[21] *People vs. Banela*, 301 SCRA 84; *People vs. Mangat*, 310 SCRA 101.

[22] *People vs. Sumampong*, 290 SCRA 471; *People vs. Dimapilis*, 300 SCRA 279.

[23] Republic Act No. 8353, which took effect on 22 October 1997, entitled "An Act Expanding the Definition of the Crime of Rape, Reclassifying the same as a Crime Against Persons, amending for the Purpose Act No. 3815, as amended, otherwise known as the Revised Penal Code, and for other purposes" is inconsequential in this case for being neither favorable nor unfavorable to the accused.

[24] TSN, June 10, 1998, pp. 2, 4, and 17.

[25] TSN, August 3, 1998, p. 3.

[26] TSN, August 5, 1998, pp. 3-4.

[27] TSN, August 10, 1998, p. 2.

[28] *People vs. Ambray*, 303 SCRA 697; *People vs. Bolatete*, 303 SCRA 709.

[29] *People vs. Magdato*, G.R. No.134122-27, February 7, 2000.

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