PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANOLITO AGUSTIN, ACCUSED-APPELLANT.

G.R. Nos. 135524-25. September 24, 2001

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PER CURIAM:

On automatic review is the decision of the Regional Trial Court of Paniqui, Tarlac, Br. 67, finding accused-appellant Manolito Agustin guilty of two (2) counts of rape and imposing on him for each crime the penalty of death. In addition, accused-appellant was ordered to pay the complainant P50,000.00 for each case as moral damages, P50,000.00 as exemplary damages, and to pay the costs. Complainant Marina Agustin is accused-appellant's one and only child. In her testimony in the trial court, she accused her father of raping her in their house located in Matalapitap, Paniqui, Tarlac, two times when she was 14 years old.

The facts of the case are as follows:

On February 12, 1997 at around 4:00 p.m., 14-year old Marina Agustin was alone cleaning their house located in Matalapitap, Paniqui, Tarlac, when her father Manolito Agustin arrived from work. Suddenly, Manolito placed Marina on the "papag," forced her to lie down and removed her shorts and panty. Then, Manolito removed his pants and brief, opened Marina's legs and inserted his penis into her vagina.[1]

Marina pleaded to her father not to rape her but her plea fell on deaf ears. After the forcible coitus, Manolito warned Marina not to report the matter to anybody, otherwise, he will kill her. Then, he left.[2]

On February 16, 1997, at around 6:00 p.m., Marina was alone and taking a bath when Manolito arrived home. Upon seeing her naked, Manolito approached Marina, embraced her and kissed her all over. Then, he forcibly made her lie down on the "papag" and inserted his penis into her vagina. Marina cried as she could not fight him. Thereafter, Manolito warned her not to tell anybody about what happened.[3]

Sometime in February, 1997, after Valentine's Day, Marina went to her maternal grandfather Benigno delos Reyes. She was crying. She told him that she was raped twice by her father. For fear that he might do something wrong to his son-in-law, Benigno just remained silent.[4] Marina then reported the sexual assault to a neighbor named Helen Estrella. The latter accompanied Marina to her grandfather Benigno. The latter asked Helen to accompany Marina to the authorities.[5]

At the police station in Paniqui, Tarlac, Marina executed a sworn statement.[6]

Thereafter, Marina was placed under the custody of the Department of Social Welfare and Development (DSWD).[7]

On February 20, 1997, at 3:00 p.m., Marina was examined by Dr. Alicia Castro after receiving a request from Senior Police Officer Amador Valerio, Officer-in-Charge of the Paniqui Police Station.[8]

On May 21, 1997, accused-appellant was charged with two (2) counts of rape under the following Complaints:

> "Criminal Case No. 1256

> "That on or about February 12, 1997, in Barangay Matalapitap, Municipality of Paniqui, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Manolito Agustin being then the father of complainant did then and there willfully, unlawfully and feloniously using force and intimidating (sic) have carnal knowledge of his daughter Marina delos Reyes Agustin who was then fourteen (14) years old.
>
> "Contrary to law.
>
> "Criminal Case No. 1257
>
> "That on or about February 16, 1997, in Barangay Matalapitap, Municipality of Paniqui, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Manolito Agustin being then the father of complainant did then and there willfully, unlawfully and feloniously using force and intimidating (sic) have carnal knowledge of his daughter Marina delos Reyes Agustin who was then fourteen (14) years old.
>
> "Contrary to law."

Upon arraignment on February 25, 1998, accused-appellant Manolito Agustin, duly assisted by counsel Atty. Bienvenido Perez, entered a plea of not guilty to both charges. Trial was conducted.

The prosecution presented the following witnesses: 1.) Private complainant Marina Agustin; 2.) Benigno delos Reyes, complainant's grandfather; 3.) Helen Estrella, a neighbor of complainant; and 4.) Dr. Alicia Castro, resident physician at the Tarlac Provincial Hospital, Department of Obstetrics and Gynecology, Tarlac, Tarlac.

Accused-appellant was presented as sole witness for the defense. He admitted that the complainant is his daughter with his wife Julieta delos Reyes Agustin and testified that his daughter was born on June 4, 1982.[9] He denied having carnal knowledge with his daughter on 12 February 1997. According to him, he was at work at Bascos in Carriedo, Paniqui, Tarlac, after which, he went to his father's house at Manaois, Paniqui, Tarlac. He slept there.

Accused-appellant, however, testified that on February 16, 1997, he did abuse Marina by inserting his finger in her vagina.[10] His desire was caused by his longing for his wife who left him six (6) months before February 1997.[11]

Accused-appellant claimed that the complaint was filed by his daughter because of the orders/instructions of her grandfather who was interested in appropriating his house and lot.[12]

On August 27, 1998, the trial court rendered judgment, the dispositive portion of which reads:

> "WHEREFORE, finding accused guilty beyond reasonable doubt of the crime of incestuous rape, the Court hereby sentences accused Manolito Agustin:
>
> "1. For Criminal Case No. 1256 - to suffer the penalty of DEATH; and
>
> "2. For Criminal Case No. 1257 - to suffer again the penalty of DEATH,
>
> both by lethal injection; he is further ordered to pay complainant P50,000.00 for each case as moral damages; and P50,000.00 as exemplary damages and to pay the costs.
>
> "SO ORDERED."

Hence, the present automatic review. Accused-appellant now raises the following issues:

> "I
>
> "The trial court erred in convicting the accused of the crime of rape despite the failure of the prosecution to

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> prove his guilt beyond reasonable doubt.
>
> "II
>
> "On account of the admission by the accused that he fingered his daughter, the trial court should have convicted him for the lesser offense of acts of lasciviousness."

In support of the first assigned error, accused-appellant contends that contrary to the allegations in the complaint, the complainant testified that her father did not have any difficulty in satisfying his evil desire and that nothing was presented to prove or show that accused forced or intimidated his daughter in having sexual intercourse with him.

Accused-appellant avers that the allegations of the complainant that the first sexual intercourse lasted for one (1) hour without any interruption is highly incredible.

Accused-appellant also points out that the findings in the medical report and the testimony of the examining physician contradicts rather than strengthens the allegations of the prosecution.

Accused-appellant also assails as conflicting the testimonies of the prosecution witnesses with regard to the date of the second rape (whether February 14 or 16) and the date (whether February 20 or 21) when private complainant confided to her grandfather and to her neighbor that she was raped by her father.

The Court finds the first assigned error to be without merit.

Carnal knowledge took place under circumstances of force and intimidation for in rape committed by a father against his own daughter, the former's moral ascendancy over the latter substitutes for violence or intimidation.[13] As held in one case,

> "In a rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter substitutes for violence or intimidation. That ascendancy or influence necessarily flows from the father's parental authority, which the Constitution and the laws recognize, support and enhance, as well as from the children's duty to obey and observe reverence and respect towards their parents. Such reverence and respect are deeply ingrained in the minds of Filipino children and are recognized by law. Abuse of both by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants."[14]

As to the accused-appellant's averment that complainant's allegation that the first sexual intercourse lasted for one (1) hour, is incredible, suffice it to state that the same is a mere estimate. What is material is that the accused-appellant indeed had carnal knowledge of the complainant.

The issues posed by accused-appellant on the results of medical examination of the private complainant deserve scant consideration because a medical examination is not indispensable in a prosecution for rape.[15] In fact, there could be a finding of rape even if the medical examination showed no vaginal laceration.[16] Moreover, the examining physician testified that it is possible that the victim was sexually abused.[17]

Besides, it is settled that when a woman, more so if she is a minor, says that she has been raped, she says, in effect, all that is necessary to constitute the commission of the crime, and this rule applies with more vigor when the culprit is the father of the victim.[18]

As to the alleged conflicting testimonies of the prosecution witnesses, on the date of the second rape, suffice it to state that accused-appellant testified that he fingered his daughter on February 16, 1997 which jibes with the complainant's claim that the second rape occurred on February 16, 1997. As to the alleged conflict on the date when complainant reported the matter to her neighbor, the same is a minor inconsistency which is not an element of the crime of rape.

The Court finds complainant's testimony as well as those of the other witnesses for the prosecution, positive, credible and convincing. The same could not be said of accused-appellant's testimony. His claim that the charges were filed against him because complainant's maternal grandfather was interested in his house and lot is hard to believe. This claim of accused-appellant is even negated by the fact that the victim's grandfather was not even the one who accompanied the victim to the authorities to report the incident because he was so angry he might do something wrong to accused-appellant.

On the second assigned error, accused-appellant alleges that on account of his admission that he fingered his daughter, the trial court should have convicted him for the lesser offense of acts of lasciviousness. According to accused-appellant, that he just fingered his daughter was amply supported by the result of the complainant's medical examination, that the complainant's vagina did not sustain gross deformities, the introitus admitted only one (1) finger; the cervix was closed; and no sperm was recovered.

This Court is not convinced.

The following testimony of the accused-appellant shows that he was not telling the truth, and the improbability of his claims that he merely fingered his daughter, considering that his daughter was already naked and his admission that, during that time, he was longing for his wife who left him six (6) months before the incident. His carnal lust could not possibly be sated without doing the sexual act. Accused-appellant testified:

> "Q
>
> But you required her to undress?
>
> "A
>
> No, sir.
>
> "Q
>
> What was she wearing then when you fingered her?
>
> "A
>
> She was wearing t-shirt, sir.
>
> "Q
>
> How about her underwear?
>
> "A
>
> She was wearing shortpants, sir.
>
> "Q
>
> Will you kindly demonstrate how you were able to finger your daughter with her underwear on?
>
> "A
>
> I removed her shortpants for a while, sir.
>
> "Q
>
> Including her panty?
>
> "A

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Yes, sir.

"Q

And she was naked below while you were fingering her?

"A

She had, (sic) sir.

"x x x x x x x x x

"Q

And your daughter was not resisting?

"A

No, sir.

"Q

Despite the fact that your daughter was not resisting all you have done was to finger her, is that what you want to tell the Honorable Court?

"A

Yes, sir.

"Q

And no more?

"A

No more, sir.

"x x x x x x x x x

"x x x x x x x x x

"Q

How many months was it away from February 12, when your wife left you?

"A

Six (6) months already, sir."[19]

The above quoted testimony of accused-appellant pales in comparison to the young complainant's testimony which was given in a straightforward and spontaneous manner. Testimonies of rape victims who are young or of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credit. For sure, the victim would not make public the offense, undergo the trouble and humiliation of a public trial, and endure the ordeal of testifying to all its gory details if she had not in fact been raped.[20] It is unbelievable for a daughter to charge her own father with rape at the expense of being ridiculed.

The trial court's observation is enlightening, viz.

> "The Court had observed carefully the deportment and behavior of complainant while testifying on the witness stand. She is artless and simple, ingenuous and inexperienced. Pearly tears cascaded down her youthful cheeks

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> while recounting her traumatic experience in the uncaring hands of her own father, especially when she was asked to point to the person who brutally assaulted her chastity. The Court has no cogent reason to discredit and disbelieve the complainant. She testified in a simple and straightforward manner. She narrated her harrowing experience in a coherent and spontaneous manner, indicative and impressive that she was not concealing anything but simply narrating the truth. She was only impelled with no ill-motive but her determination to bring behind bars the ravisher of her honor, unmindful and unfearful of becoming an outcast of society. Her testimony had been scrutinized with extreme caution but the court failed to find any track and footprint of falsehood and concoction. The uncorroborated testimony of complainant passed successfully the exacting criterion of credibility.
>
> "x x x x x x x x x
>
> "x x x x x x x x x
>
> "Complainant is naive and innocent young girl. She is only less than fifteen years old at the time her honor was ravaged and devastated. Her father and mother were separated, and she opted to stay with her father. Since her mother left, she performed the household chores. She cooked and served food for her father and washed clothes for the latter. Viewed from the foregoing, it is ridiculous to conclude that complainant has fabricated and concocted a very serious charge of rape, especially against the very person who gave her life and breath, if indeed she was not sexually abused."

The Court notes that Marina cried while testifying. This is an eloquent demonstration of the verity of her claim that she was raped. It has been ruled that the crying of the victim during her testimony is evidenced of the credibility of the rape charge with the verity born out of human nature and experience.[21]

The trial court also aptly rejected appellant's denial, to wit:

> "The denial of the accused that he did not rape complainant on February 12, 1997, but only fingered her vagina on February 16, 1997 is undeserving of merit. It is grossly incredible and unworthy of credence. It will not prevail over the positive, clear and straight-forward testimony of complainant that she was twice raped by the accused. Complainant's testimony that she was raped was corroborated by the testimony of Dr. Alicia E. Castro that she found several lacerations which were healed and incomplete, which were probably caused by insertion of hard object, like penis. That it is possible that the victim was sexually abused.
>
> "It is true that insertion of the fingers may have caused the said lacerations, but the accused failed to establish that said lacerations were, indeed, caused by the insertion of his fingers into the vagina of complainant. His own statement that he only inserted his fingers is self-serving. Accused miserably failed to establish ill-motive for his daughter in filing a grave and serious crime of rape against him. He even stated that her daughter, the complainant, love and respect him as a father."

The Court therefore finds that the trial court did not err in finding the accused-appellant guilty beyond reasonable doubt of the crime of rape, and in imposing the death penalty.

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.

In the instant case, the information alleged that the victim was a 14-year-old minor and the appellant was the victim's father. While no birth certificate or any official document was presented to prove Marina's age, we uphold the trial court's appreciation of the qualifying circumstances of minority. Marina's testimony as to her date of birth coupled with appellant's admission that Marina was born on June 4, 1982[22] sufficiently established her minority. Hence, a birth certificate or any other official document is no longer necessary to establish the minority of the victim, since the same is admitted and undisputed by the accused himself. As held in the recent case of People vs. Remudo,[23]

> "In the instant case, the information alleged that the victim was a 13-year-old minor and the accused was the victim's brother. While no birth certificate or any official document was presented to prove MARISSA's age, we uphold the trial court's appreciation of the qualifying circumstance of minority. MARISSA's testimony as to her date of birth coupled with DANILO's admission that MARISSA was born on 12 July 1983 sufficiently established her minority. Hence, a birth certificate or any other official document is no longer necessary to establish the minority of the victim, since the same is admitted and undisputed by the accused himself."

The qualifying circumstance of relationship was also undisputedly proved by the prosecution.[24] Moreover, appellant categorically admitted that Marina is his daughter. Thus, on direct examination he declared:

> "Q
>
> Is Marina delos Reyes Agustin your only child with Julita Agustin?
>
> "A
>
> Yes, sir.
>
> "Q
>
> Are you married to Julita Agustin?
>
> "A
>
> Yes, sir.
>
> "Q
>
> When were you married?
>
> "A
>
> I do not remember anymore, sir.
>
> "Q
>
> And when was your daughter born?
>
> "A
>
> June 4, 1982, sir."[25]

Four members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional. Nevertheless they submit to the ruling of the Court, by Majority vote, that the law is constitutional and the death penalty should be accordingly imposed.

With regard to the civil liability of the accused, we affirm the trial court's award of P50,000.00 for moral damages. 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. Additionally, in line with current jurisprudence,[26] appellant Manolito Agustin should be ordered to indemnify the complainant in the amount of P75,000.00. However, the award of P50,000.00 as exemplary damages should be reduced to P25,000.00 in accordance with prevailing jurisprudence.[27]

WHEREFORE, the judgment of the Regional Trial Court of Paniqui, Tarlac, Branch 67, in Criminal Case Nos. 1256 and 1257, finding accused-appellant MANOLITO AGUSTIN guilty beyond reasonable doubt of two (2) counts of rape penalized under Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No.

7659, and sentencing him to suffer the death penalty in each of the two (2) cases, and to pay the victim Marina Agustin P50,000.00 moral damages in each case, is hereby AFFIRMED with the MODIFICATION that the award of P50,000.00 as exemplary damages is reduced to P25,000.00 in each case. The accused-appellant is further ordered to pay the victim an additional amount of P75,000.00 as indemnity, also in each case.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of R.A. 7659, upon finality of this decision, let certified true copies thereof and the record of this case be forwarded forthwith to the Office of the President for possible exercise of the clemency and pardoning power.

Costs de officio.

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.

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[1] TSN, March 24, 1998, pp. 3-5.

[2] TSN, Ibid., pp. 6-7.

[3] Ibid., pp. 7-11.

[4] TSN, March 31, 1998, pp. 18-21.

[5] TSN, July 8, 1998, pp. 3-5.

[6] Exh. "A," Original Records, p. 8; TSN, March 24, 1998, p. 13.

[7] TSN, March 31, 1998, p. 16.

[8] TSN, April 28, 1998, p. 3.

[9] TSN, July 28, 1998, p. 4.

[10] TSN, July 28, 1998, p. 7.

[11] TSN, August 4, 1998, pp. 6-9.

[12] TSN, July 28, 1998, pp. 3-10; TSN, Aug. 4, 1998, pp. 2-5.

[13] People vs. Bayona, 327 SCRA 190 [2000]; People vs. Bernaldez, 322 SCRA 462 [2000]; People vs. Sandico, 307 SCRA 204 [1999].

[14] People vs. Panique, 316 SCRA 757 [1999].

[15] People vs. Delos Reyes, 327 SCRA 56 [2000], citing People vs. Catoltol, Sr., 265 SCRA 109 [1996] and People vs. Sadang, 233 SCRA 412 [1994].

[16] People vs. Sapurco, 245 SCRA 519 [1995].

[17] TSN, April 28, 1998, pp. 4-6.

[18] People vs. Tabugoca, 285 SCRA 312 [1998].

[19] TSN, Aug. 4, 1998, pp. 6 and 9.

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[20] People vs. Victor, 292 SCRA 186 [1998].

[21] People vs. Gecomo, 254 SCRA 82 [1996].

[22] TSN, July 28, 1998, p.4.

[23] G.R.127905, Aug. 30, 2001.

[24] TSN, March 24, 1998, p. 3.

[25] TSN, July 28, 1998, p. 4.

[26] People vs. Remudo, G.R. 127905, Aug. 30, 2001.

[27] People vs. Abulencia, G.R. 138403, August 22, 2001.

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