

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO DELA CRUZ Y CARIZZA, ACCUSED-APPELLANT.

G.R. Nos. 135554-56. June 21, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Before the Court on automatic review is the Decision dated August 13, 1998 of the Regional Trial Court of Baguio City, Branch 6, in Criminal Cases Nos. 15163-R, 15164-R and 15368-R finding accused-appellant Danilo dela Cruz y Carizza guilty of two (2) counts of rape and one (1) count of acts of lasciviousness.

On August 29, 1997, two informations for rape were filed against accused-appellant in the RTC of Baguio City. The informations alleged:

Criminal Case No. 15163-R -

That sometime in the month of September, 1990, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of his daughter, JEANNIE ANN DELA CRUZ, a minor, then 11 years of age, against her will and consent.

CONTRARY TO LAW. [1]

Criminal Case No. 15164-R -

That sometime in the month of July, 1995, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously and by means of force and intimidation, have carnal knowledge of his daughter, JEANNIE ANN DELA CRUZ, a minor, then 16 years of age, against her will and consent.

CONTRARY TO LAW.[2]

On December 11, 1997, another information was filed against accused-appellant charging him with violation of Republic Act No. 7610 (The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act). The information stated:

That on or about the 2[nd] day of August, 1997, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously commit sexual abuse on his daughter either by raping her or committing acts of lasciviousness on her, which has debased, degraded and demeaned the intrinsic worth and dignity of his daughter, JEANNIE ANN DELA CRUZ as a human being.

CONTRARY TO LAW.[3]

This case was docketed as Criminal Case No. 15368-R.

Upon motion of the prosecution, the trial court ordered the consolidation of the three cases. When arraigned, accused-appellant entered a plea of not guilty to each of the charges. Thereafter, a joint trial of the cases ensued.

The prosecution presented as its witnesses complainant Jeannie Ann dela Cruz; Dr. Ronald R. Bandonill, the medico-legal officer of the National Bureau of Investigation-Cordillera Administrative Region (NBI-CAR); Mrs. Jean dela Cruz, mother of complainant and spouse of accused-appellant; and SPO2 Melchor Ong of the Baguio City Police.

The prosecution established that accused-appellant married Jean dela Cruz in civil rites on 14 April 1977 and again in Catholic rites on 27 December 1978. They begot four children, namely: Jeanie Ann (the private complainant), Divine Grace, Daniel Jay and Gerard Niño.[4]

Accused-appellant, a teacher, worked at the Don Bosco Technical Institute in Tarlac from 1978 to 1986. He transferred to the Don Bosco Elementary School in Baguio City sometime in 1986 and taught there until the following year. In 1987, he worked at the Saint Louis Center in Baguio City until his dismissal therefrom in 1993. Accused-appellant again taught at the Don Bosco Technical Institute in Tarlac from 1993 until his arrest in August 1997.[5] While working there, he and his son Daniel stayed in Sto. Cristo, Tarlac on weekdays and went home every 15 days or every payday. They would go home to Baguio City, where the rest of their family stayed, on Friday evening and return to Tarlac on Sunday afternoon.[6]

Jeannie Ann dela Cruz (“Jeannie Ann”) testified that she was born to accused-appellant and Jean Aqui-dela Cruz on April 18, 1979 in Tarlac, Tarlac. Not long after her birth, her family transferred to the house of her maternal grandmother in No. 2 Sumulong Street, Baguio City. Her family lived in an extension of her grandmother’s house which had a basement, a second floor and an attic. The second floor had four rooms and a stairs leading to the attic, which served as a stockroom. Jeannie Ann’s parents and her two brothers, Daniel and Niño, stayed in the basement while she and her sister, Divine stayed in the second floor.[7]

Jeannie Ann revealed that accused-appellant started molesting her when she was seven years old. While he helped do her homework at night, accused-appellant would on occasion make her hold his penis and masturbate him. There were also instances when he would put his penis inside her mouth and withdraw the same when a white liquid came out.[8] Accused-appellant warned Jeannie Ann not to tell her mother what he was doing to her and told her that it was a normal thing between father and daughter. He further warned Jeannie Ann that her mother might kill them should she learn about the things that they did. Jeannie Ann believed accused-appellant and did not tell anyone about the sexual acts he performed on her. As she was growing up, accused-appellant continued to engage in the aforementioned sexual activities with her, and continuously threatened to hurt her, her siblings or her mother if she did not give in to his desires. Jeannie Ann still refrained from complaining because she was convinced by the accused-appellant that the sexual activities which he performed on her were proper.[9] She recounted before the trial court three particular occasions when accused-appellant molested her.

Jeannie Ann said that sometime in September 1990, she was sexually abused by accused-appellant in their house in No. 37 Leonard Wood Road, Baguio City. She was only 11 years old then. According to Jeannie Ann, their family had moved to said house when her grandmother’s house in Sumulong St. was destroyed in the July 16, 1990 earthquake that hit Baguio City.[10] They occupied the basement of the house in Leonard Wood Road. The basement had two bedrooms, a comfort room and a living room. Nobody stayed in the second floor thereof but during the day they stayed in the main house.[11] Sometime that month, Jeannie Ann, her three year-old brother Niño and accused-appellant were left in the house while her mother and her sister Divine went to market. She was in the living room with Niño when her father undressed her. Her father removed his pants and she was made to lie down on a cushion. Her father played with her genitalia and rubbed his penis against her private part until a white

liquid came out of his penis. Jeannie Ann said that after said incident, she felt pain in her vagina whenever she would urinate (mahapdi). She did not resist because she thought that what her father was doing to her was a normal act.[12]

Jeannie Ann narrated that accused-appellant again abused her one night in July 1995 when she was 16 years old. She was watching television with her siblings in the living room. At that time, their mother was attending a meeting in church. Accused-appellant called her three times but she refused to respond to his call as she was watching television. Exasperated, accused-appellant pulled her inside one of the bedrooms and asked her to lie down on the bed saying, "This is only for a while." Accused-appellant then undressed her, removed his pants and underwear, inserted his finger inside her vagina, mashed her breasts and licked her vagina. Accused-appellant proceeded to rub his penis against her vagina and thereafter inserted his penis therein and kept it there until his semen started to come out. Accused-appellant placed his penis on Jeannie Ann's stomach where he made his semen flow. While all this was happening, Jeannie Ann could only cry, as she was afraid of accused-appellant, because he threatened her that he would kill her or her mother and siblings.[13]

The third incident recounted by Jeannie Ann occurred in their house in No. 2 Sumulong Street, Baguio City on August 2, 1997. She was then 18 years old. When she came home at around 10:30 in the morning after her classes at Saint Louis University, she saw accused-appellant at the door. He told her to proceed to the attic shortly. She ignored him and went directly to her room and started cleaning the same. While she was cleaning the outer portion of her room, she saw accused-appellant go up the attic. While he was there, he repeatedly called her and asked her to go there. When Jeannie Ann remembered that her mother had earlier instructed her to clean the attic, she went up when she was done cleaning her room.[14]

Accused-appellant lay on the bed in the attic as Jeannie Ann swept the floor. When she was done, accused-appellant asked her to join him on the bed. He went near her and again asked her to sit on the bed when she refused to heed his call. Accused-appellant whispered to her that he was running out of time. He talked in whispers so that the other people in the house at that time would not be able to hear what he said. Sensing that accused-appellant would again molest her, Jeannie Ann became nervous and started to cry. He told her to stop crying and to relax, as what he was about to do would only take a while. Accused-appellant then lifted Jeannie Ann's t-shirt and brassier, mashed her breasts with his left hand and inserted his right hand inside her pants. Jeannie Ann resisted, but accused-appellant proceeded to insert a finger of his right hand inside her vagina. While he performed the aforementioned acts on his daughter, accused-appellant told her, "I love you very much. Promise me that I will be the only one who will do this to you." [15]

Accused-appellant only stopped what he was doing when he heard Aileen, a boarder in their house, calling Jeannie Ann. He immediately fixed her clothes and hair, then moved away from her. Accused-appellant instructed Jeannie Ann not to go down and to keep quiet about the incident. When accused-appellant noticed that Aileen had left because Jeannie Ann did not respond to her, accused-appellant embraced Jeannie Ann and said: "Please cooperate with me and trust me. I have given you my life. Promise that I will be the only one who will touch you." Accused-appellant began touching her again. He inserted his fingers inside her vagina. As he touched her, he said, "Please cooperate with me and trust me. This is for your own good and for the good of our family. If you will not follow me, you might regret it. I want you to have a bright future. And after you finish, I can already die and you will no longer have any problem." [16] Although Aileen, Divine, Niño and Rogel, another boarder in their house were also there at the time of the incident, Jeannie Ann did not have the courage to call for help because she was very much afraid of accused-appellant, and she saw anger in his eyes.[17]

When accused-appellant was done with her, Jeannie Ann insisted on going down. She cried as she returned to her room to fix herself. Thereafter, she went out of the house to deal with what had just happened to her. While

walking outside toward the bridge, she saw a white L-300 van belonging to the police. She flagged down the vehicle and narrated to the two police officers riding therein, SPO2 Bravo and SPO2 Ong, what accused-appellant had just done to her. The policemen accompanied her back to their house where they met accused-appellant whom Jeannie Ann identified as the person who had raped her. Accused-appellant voluntarily went with the policemen to the Baguio City Police Station.[18]

When they arrived at the Baguio City Police Station, Jeannie Ann narrated her experience to the police officer stationed at the Women's Desk. In her statement, Jeannie Ann described what accused-appellant did to her on August 2, 1997.[19]

Jeannie Ann also denied accused-appellant's claim that she had sexual relations with her boyfriend Charles, and that she accused her father of rape to get back at him for causing her breakup with Charles.[20]

Dr. Ronald R. Bandonill, the NBI-CAR medico-legal officer who conducted a physical examination of Jeannie Ann on August 8, 1997, testified that he found two old healed lacerations at 5 o'clock and 7 o'clock positions on Jeannie Ann's hymen. He said that the lacerations could have been inflicted more than three months prior to the date of the examination and considering the proximity of their location, could have been inflicted at the same time. A hard rigid instrument like an erect male organ, a rigid wood or a finger could have caused these lacerations. Dr. Bandonill also opined that the positions of the lacerations did not rule out the possibility that the victim had sexual intercourse less than three months prior to his examination of her, since intercourse would not create further lacerations when done in the same position. He likewise noted that the vaginal walls were lax and the vaginal rugosities were slightly flattened and smoothed. The victim's hymenal orifice admitted a tube 2.4 cm. in diameter with ease. Dr. Bandonill said it was possible that penetration happened several times. He further testified that the frequent insertion of a finger or other rigid object, with a diameter of more than an inch, could cause the lacerations as well as the lax condition of vaginal walls.[21]

Jean dela Cruz ("Mrs. dela Cruz"), Jeannie Ann's mother and wife of accused-appellant, testified that she learned that accused-appellant had sexually abused their daughter Jeannie Ann on August 2, 1997 when she arrived at home after her marketing chores. She was told by her daughter Divine that accused-appellant was picked up by the police. Mrs. dela Cruz followed accused-appellant to the police station and found Jeanie Ann crying while the latter was reporting what had happened to her at the Women's Desk. Upon seeing her daughter, Mrs. dela Cruz hugged her and they cried together.[22]

Mrs. dela Cruz further stated that she was shocked upon hearing Jeannie Ann's statement before the police that accused-appellant had been performing oral sex on their daughter Jeannie Ann since the latter was seven years old, as it was the first time that she learned about it. In her anger, she rushed to the other room where the accused-appellant was being questioned and slapped him, kicked him and scratched his face. She said accused-appellant denied all the accusations against him. When accused-appellant was already incarcerated, Mrs. dela Cruz received several letters[23] from him asking for forgiveness from her and from Jeannie Ann.[24] She also informed the trial court that after accused-appellant's incarceration, she went to Tarlac to get her husband's things since he usually stayed there on weekdays while he taught at Don Bosco.[25] She discovered several love letters by a certain Emily addressed to accused-appellant,[26] Emily's photograph[27] and accused-appellant's draft love letters to Emily, dated March 21, 1995,[28] September 4, 1995,[29] and March 7, 1996.[30] Mrs. dela Cruz also found a letter from a certain Maureen telling accused-appellant that he had a chance of winning her heart,[31] and a photograph of Maureen.[32] She said that the tenor of the letters indicated that accused-appellant was having relations with other women.[33] Mrs. dela Cruz also denied accused-appellant's claims that she had a paramour and that she helped Jeannie Ann file the complaints against him because she (Mrs. dela Cruz) wanted to get back at him for being unfaithful to her.[34]

SPO2 Melchor Ong, the police officer assigned to the Baguio City Mobile Group, also testified that on August 2, 1997, between 11:30 a.m. and 12:00 noon, while he and his companion inside an L-300 van of the Baguio City police were passing along Sumulong St., Baguio City, they saw Jeannie Ann walking towards them. The latter stopped them and tearfully reported to them that her father had just sexually molested her. They accompanied Jeannie Ann to her house and there the latter pointed to accused-appellant as the person who mashed her breasts and inserted his finger inside her vagina. SPO2 Ong and his companion approached accused-appellant, introduced themselves as policemen and invited him to the police station. He said that accused-appellant readily agreed to go with them to the police station.[35]

The defense presented as witnesses the accused-appellant, Camilo Estepa, Barangay Chairman of Barangay Holy Ghost, Baguio City, Fr. Exequiel Veloso, Principal of the Don Bosco Technical Institute, and Fr. Jean Marie Tchang, Director of the Don Bosco in Trancoville, Baguio City.

Accused-appellant testified that he was a teacher at the Don Bosco Technical Institute in Tarlac, Tarlac from 1978 to 1986. In 1987, he transferred to Don Bosco in Trancoville, Baguio City and worked there for a year. From 1988 to 1993, he taught also in Saint Louis School Center. In 1994, he went back to the Don Bosco Technical Institute in Tarlac, Tarlac and had taught there until his incarceration in August 1997.[36] On weekdays, he and his son Daniel stayed in Sto. Cristo, Tarlac, Tarlac and they would go home to their family in Baguio City every 15th and 30th of each month to give his salary to his wife. When these dates fell on a weekday, they would go home to Baguio City the following Friday and return to Tarlac on Sunday afternoon.[37]

He denied all the accusations hurled against him by his daughter Jeannie Ann.[38] According to him, he tried to provide for the needs of his family, especially his wife whom he loved very much. He maintained that even when he was already in jail, he asked his mother and his sister to support his daughter's education.

He admitted to having gone home to Baguio City in the evening of August 1, 1997, which he recalled was a Friday. That night, his wife asked him to clean the attic the following day as there was a dead rat therein.[39]

The following day, August 2, 1997, accused-appellant removed the decomposing body of the rat from the attic as requested by his wife. He called his daughter Jeannie Ann who was cleaning her room on the second floor of the house to come to the attic and help him. It took a while before Jeannie Ann heeded his call. When she finally went up, she merely swept one third of the floor area of the attic, away from where the dead rat was. When she was done sweeping the floor, accused-appellant asked her to come near him, as he wanted to apologize for having scolded her earlier and to remind her that she should not have ignored him when he commanded her to go up the attic, or to at least tell him that she could not obey his command immediately. While he was talking to her, they heard someone calling her name. Jeannie Ann told accused-appellant that that person was her classmate. She then went down while accused-appellant stayed on to fix the things in the attic. Not long afterwards, his daughter Divine informed him that they had some visitors downstairs. On his way down from the attic, he looked out of the window and saw Jeannie Ann walking beyond the bridge.[40]

Accused-appellant went down to meet the visitors who were looking for Rogel, one of their boarders. After leading these visitors to Rogel, two policemen arrived in their house with Jeannie Ann. Accused-appellant identified the policemen as SPO2 Leonardo Cruz Bravo and SPO2 Melchor Ong. The former asked for accused-appellant's name and thereafter invited him to the police station. He freely went with them, without asking the purpose of the invitation.[41]

At the station, SPO2 Leonardo Cruz Bravo interviewed accused-appellant. The interview was reduced to writing and he was asked to sign the same. He did not read the document, as he did not have his eyeglasses with him at that time. At first, accused-appellant refused to sign the document without the presence of his counsel. SPO2

Leonardo Cruz Bravo, however, told him that his refusal to sign the document may be interpreted as a sign of resistance on his part. Accused-appellant thereafter decided to sign the document.[42]

Accused-appellant admitted that he transferred to the Don Bosco Technical Institute in Tarlac, Tarlac because he was dismissed from the Saint Louis Center in Baguio City. He acknowledged that while teaching in Saint Louis Center, a student named Freda Miguel filed a case[43] against him because accused-appellant allegedly embraced her (Miguel) in the Science Laboratory Room of the school, and that he signed an amicable settlement of the complaint. However, he denied the truth of that complaint against him and said that the filing thereof was not the cause of his dismissal from Saint Louis Center.[44]

He also admitted that the letters from Emily and Maureen addressed to him were his but insisted that they were only his friends, and that Emily's reference to him as her boyfriend in one of her letters[45] was only a joke.

Accused-appellant claimed that his wife and Jeannie Ann conspired to file the cases against him because they had resentments against him. He said Jeannie Ann blamed him for having caused her breakup with her boyfriend Charles. His wife, on the other hand, wanted him out of her life because she had a paramour. According to him, his wife admitted to him that she had an illicit relationship with a man named Alfredo dela Cruz, a namesake of his brother. His wife had a second relationship with a person named Alfredo Aquino against whom he filed a case before the barangay.[46]

Camilo Estepa, Barangay Captain of Barangay Holy Ghost, Baguio City, told the trial court that sometime in 1993, accused-appellant filed a case for malicious mischief against a certain Alfredo or Federico Aquino, a boarder in the house of Mrs. Aqui, the mother of Mrs. dela Cruz. Accused-appellant alleged that Aquino was courting his wife. However, the case was settled amicably when Aquino agreed to leave the boarding house of Mrs. Aqui.[47]

Fr. Exequiel Veloso, Principal of the Don Bosco Technical Institute in Tarlac from 1994 to 1998, testified that he had known accused-appellant since 1994 and was not aware of any untoward incident involving the latter. He said that accused-appellant and his son Daniel would go home to his family in Baguio City every weekend and returned to Tarlac either on Sunday evening or Monday morning. He would come to school on time and attended the flag ceremony regularly. Fr. Veloso said that none of the lady teachers ever complained about accused-appellant.[48]

Fr. Jean Marie Tchang, Director of the Don Bosco Elementary School in Trancoville, Baguio City, testified that accused-appellant was a very competent teacher in Science and had a very good relationship with the other teachers. He said he regretted that accused-appellant left his teaching job at the Don Bosco Elementary School after only one year.[49]

On August 13, 1998, the trial court promulgated its decision, the dispositive portion of which reads:

WHEREFORE, Judgment is hereby rendered as follows:

- In Criminal Case No. 15163-R, the Court finds the accused Danilo dela Cruz y Carizza guilty beyond reasonable doubt of the offense of Rape (committed in September 1990) as charged in the Information defined and penalized under paragraph No. 3 of Article 335 of the Revised Penal Code (Statutory Rape) and hereby sentences him to suffer the penalty of reclusion perpetua; to indemnify the offended party, Jeannie Ann dela Cruz the sum of P50,000.00 as Moral Damages without subsidiary imprisonment in case of insolvency and to pay the costs.

The accused Danilo dela Cruz being a detention prisoner is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code.

- In Criminal Case No. 15164-R, the Court finds the accused Danilo dela Cruz y Carizza guilty beyond reasonable doubt of the offense of incest rape (committed in July 1995) as charged in the Information defined and penalized under Section 11 of Republic Act 7659 (Heinous Crime Law) which amended Article 335 of the Revised Penal Code and hereby sentences him to suffer the supreme penalty of Death to be implemented in accordance with law; to indemnify the offended party Jeannie Ann dela Cruz the sum of P50,000.00 as Moral Damages without subsidiary imprisonment in case of insolvency and to pay the costs.

- In Criminal Case No. 15368-R, the Court finds the accused Danilo dela Cruz y Carizza guilty beyond reasonable doubt of the offense of Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code instead of violation of RA 7610 (Child Abuse Law) as charged in the Information and hereby sentences him, applying the indeterminate sentence law, to suffer the penalty of imprisonment ranging from two (2) months and one (1) day of Arresto Mayor as Minimum to two (2) years four (4) months and one (1) day of prision correccional as Maximum; to indemnify the offended party Jeannie Ann dela Cruz the sum of P5,000 as Moral Damages without subsidiary imprisonment in case of insolvency and to pay the costs.

The accused Danilo dela Cruz being a detention prisoner is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Law.

SO ORDERED.[50]

In his brief, accused-appellant contends that the trial court erred in giving credence to the testimony of Jeannie Ann and in finding him guilty beyond reasonable doubt of the crimes of rape and acts of lasciviousness. He alleges that Jeannie Ann's testimony was fabricated and inconsistent.[51]

Accused-appellant points out that Jeannie Ann failed to immediately notify the authorities, or at least her mother, of her harrowing experience. Notwithstanding the fact that he was often away from their home because he stayed in Tarlac where he worked on weekdays, and Jeannie Ann was with her mother in Baguio City, it took her eleven years to disclose the sexual abuses which accused-appellant allegedly committed against her.[52] Moreover, he claims that considering Jeannie Ann's tender age at the time he allegedly raped her, she must have suffered great pain and should have complained about it to her mother or told the latter what accused-appellant had been doing to her. Accused-appellant argues that the delay in the reporting of the sexual acts he performed on his daughter is not normal and is indicative of the untruthfulness of complainant's charges.[53]

The Court finds that the trial court did not err in finding accused-appellant guilty beyond reasonable doubt of raping his daughter Jeannie Ann in September 1990 and July 1995.

Article 335 of the Revised Penal Code, which defined the crime of Rape prior to the enactment of Republic Act No. 8353 (the Anti-Rape Law of 1997), and which is the applicable law for the rape incidents of September 1990 and July 1995, states:

When and how rape is committed. --Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

xxx

In reviewing the cases at bar, the Court observed the following guidelines it had previously formulated for the

review of rape cases: (1) an accusation of rape can be made with facility, but it is difficult to prove, and even more difficult for the accused to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence of the defense.[54]

In rape cases, the issue invariably boils down to the credibility of the victim's testimony. The trial court's evaluation of the credibility of the victim's statements is accorded great weight because it has the unique opportunity of hearing the witnesses testify and observing their deportment and manner of testifying. The trial court judge is indisputably in the best position to determine the truthfulness of the complainant's testimony. Thus, unless it is shown that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight or substance that would otherwise affect the result of the case, its findings will not be disturbed on appeal.[55]

The Court has adhered to the rule that when the testimony of a woman who states under oath that she has been raped meets the test of credibility, the accused may be convicted on the basis of such testimony. A rape victim who testifies in a categorical, straightforward, spontaneous and frank manner, and who remains consistent, is a credible witness.[56]

In the cases at bar, the trial court found Jeannie Ann's testimony to be "natural, coherent and touching as she recounted her harrowing experience in the hands of her father,"[57] as follows:

xxx

q

Now, sometime in the month of July, 1995, Madame Witness, do you remember if there was anything unusual which took place again in your house at Sumulong St., Baguio City?

a

There was, sir.

q

What was that incident?

[a]

On that night I was watching TV with my brothers and sisters. While I was watching TV my father was calling me but I did not heed his call because I said I was watching TV. So, three times he called me and I know that he was already angry. Then he went near me and pulled me into the other room. And in that other room, he did bad things that I cannot imagine.

q

Now, you said that you and your brothers and sisters were watching TV on that night of July, 1995. Where was your mother at that time?

a

She was not in the house at that time because she attended a meeting in our church.

COURT: (to witness)

q

That is why we already excluded the public. Don't let the Court speculate. Will you tell us straight. What did your father actually do which you said (sic) he did things which you cannot imagine?

a

When we were in the room he let me sit on the bed. And he asked me to lie down. And he said, "This is only for a while". And after that he put down my pants and my underwear. Then he undressed, lowered his pants and removed his brief. Then he started touching my vabina (sic).

COURT:

Continue from there. Make it of record that at this point the witness is crying.

PROS. CENTENO:

q

Now after your father had removed your pants and your underwear as you said, and he also removed his pants and his brief and started holding your vagina, what else happened?

a

He fingered my vagina and also mashed mybreasts (sic). And with his tongue he licked my vagina. After that he used his penis and rubbed it into my vagina. And he played with my vagina.

q

What did you do when your father was doing that to you?

a

I was just crying, sir.

q

Did you not fight back?

a

No sir, because I was afraid of my father.

q

Why are you afraid of your father?

a

Because when I was still young, one time he told me that either I will be killed or our family will be killed.

q

On what occasion was that when your father told you that it is either you or the family that will be killed?

a

I cannot remember, sir. But that was when I was still young.

q

Now, aside from rubbing his penis to your vagina, what else did your father do?

a

When he was rubbing his penis against my vagina there was a white liquid that came out. And when that white liquid came out he placed his penis on my stomach where the white liquid was placed.

COURT: (to witness)

q

Will you tell us what you mean by his rubbing his penis to your vagina? What was being done actually?

a

I felt that half of the head of his penis was inside my vagina. That is what I felt. (At this point the witness again broke into tears)

COURT:

Continue.

PROS. CENTENO:

q

Now, when you felt that as you said half of the penis of your father was inside your vagina, what did you do?

a

None, sir.

q

Why did you not do anything?

a

Because I didn't know what to do, sir.

q

Did you not try to fight your father?

a

No, sir, because I am really afraid of my father. Because when he gets mad at my mother, my brothers and sisters would be involved.

q

Now, before July 1995, Madame Witness, particularly in September of 1990, several months after the earthquake of July 16, 1990, will you tell us where you were residing?

a

We were residing then at No. 37 Leonard Wood Road, sir.

q

How old were you?

a

I was 11 years old.

xxx

q

When you were staying at Leonard Wood Road, Baguio City, together with your father, your mother, your sister and your brothers in September of 1990, do you remember if there was any unusual incident which happened to you?

a

Yes, sir.

q

What was that incident?

a

I was with my father and brother Niño at the sala. And at the sala he undressed me and did the same. He removed his pants. Then he took a cushion from the sala and asked me to lie down. And there he played with my vagina. Then he rubbed his penis against my vagina. Niño was still a baby at that time.

q

Where was your mother at that time?

a

My mother was not in the house at that time. What I know is that she went to the market.

q

How about you sister Divine?

a

She was with my mother, sir.

COURT: (to witness)

q

Again, in this incident will you describe actually to us the motions that took place with the rubbing of his penis into your vagina?

a

It is like this, sir. For example this is my vagina (witness showing her left hand, palms up) and this is his penis (witness demonstrating with her right forefinger), he made a push and pull movement on my vagina.

PROS. CENTENO:

q

What did you feel while your father was doing that to you which you term as “rubbing his penis into your vagina”?

a

I felt pain, sir.

PROS. CENTENO:

May we put the word “mahapdi” which was the term used by the witness, in the record.

(to witness)

q

How long did your father rub his penis into your vagina?

a

It was for quite a long time until a white liquid came out.

q

Did you not fight back when your father did that to you?

a

No, sir.

q

Why did you not fight back?

a

Because I thought that what he was doing to me was a normal act.

xxx[58]

The trial court judge saw "from the face of the victim the anguish and the pain and the shame and the embarrassment as she broke down and cried several times in the course of her testimony every time she was asked [about] the despicable acts of her father." [59]

Moreover, no woman would fabricate charges of sexual abuse, allow an examination of her private parts and endure the humiliation of a public trial where she would be forced to recount the details of her unfortunate experience had she not really been raped. This is especially true in cases of incestuous rape, as in these cases where Jeannie Ann accused her own father of abusing her, since reverence and respect for one's parents and other elders is deeply ingrained in Filipino children. [60]

The delay in reporting a rape incident does not necessarily impair the credibility of the victim where the delay can be attributed to the pattern of fear instilled by the threats of bodily harm, especially when made by a person who exercised moral ascendancy over the victim. It is not uncommon for a young girl to conceal for sometime the assault on her virtue because of the rapist's threat on her life, or on the life of the other members of her family. [61]

In the cases at bar, Jeannie Ann repeatedly explained that accused-appellant threatened to hurt her, her mother or her siblings if she did not give in to his desires.[62] Her fear of what accused-appellant would do to her, her mother and siblings if she revealed his evil deeds was what compelled her to suffer in silence for a long time. In *People v. Nicolas*,[63] the Court stated:

The pattern of instilling fear, utilized by the perpetrator in incestuous rape to intimidate his victim into submission, is evident in virtually all cases that have reached this Court. It is through this fear that the perpetrator hopes to create a climax of extreme psychological terror which would, he hopes, numb his victim into silence and force her to submit to repeated acts of rape over a period of time. The relationship of the victim and the perpetrator magnifies this terror, because the perpetrator is a person normally expected to give solace and protection to the victim.[64]

On the other hand, the trial court found accused-appellant to be evasive in his narration of his story. All that he offered in his defense were his bare denials. Denial, like alibi, is an inherently weak defense and cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. A mere denial constitutes negative evidence which cannot be accorded greater evidentiary weight than the declaration of a credible witness who testifies on affirmative matters.[65]

Accused-appellant's assertion that his daughter made up the charges against him to get back at him for causing her breakup with her boyfriend Charles is likewise unbelievable. It is not likely that a complainant in a rape case would fabricate a story of defloration against her own father and put to shame not only herself but her whole family as well, unless it was the plain truth and her motive was purely to obtain justice.[66] Neither does the Court believe accused-appellant's claim that his wife urged their daughter to file rape charges against him because she (his wife) wanted to get him out of the way of her extra-marital relationship. It is unnatural for a parent to use her offspring as an engine of malice, especially if it will subject them to embarrassment and even stigma.[67] No mother would have the courage to expose an ignominious act of her husband that could lead to a breakup of the family unless she was prompted by a desire to obtain justice for her daughter.[68]

The trial court committed no error in imposing upon accused-appellant the penalty of reclusion perpetua for the rape he committed in September 1990, since the offense was committed prior to the effectivity of Republic Act No. 7659 (the Death Penalty Law).[69]

However, the Court finds that the lower court erred in imposing the supreme penalty of death upon him for the rape committed in July 1995. R.A. No. 7659, which was already in force at that time, requires that the circumstances of the minority of the victim and her relationship with the offender must concur for the death penalty to be imposable. Article 335 of the Revised Penal Code, as amended by R.A. No. 7659 provides:

x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances.

- When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common degree, or the common-law spouse of the parent of the victim.

x x x

The Court has previously explained that the circumstances of minority and relationship are considered as special qualifying circumstances because they alter the nature of the crime of rape and thus warrant the imposition of the death penalty. These circumstances must be alleged in the information and established during trial for the court to be able to impose the death penalty.[70] It was, therefore, incumbent upon the prosecution to satisfactorily prove both circumstances of minority and relationship.

In Criminal Case No. 15164-R, the father-daughter relationship was alleged in the information and proven in the course of the trial. However, Jeannie Ann's minority, although likewise alleged in the information, was not sufficiently proved. All that was offered to establish her age was her bare testimony that she was born on April 18, 1979. The prosecution failed to present her birth certificate, or in lieu thereof, other documentary evidence such as her baptismal certificate, school records which would have aided the court in verifying her claim that she was a minor when she was raped by accused-appellant in July 1995.

In the absence of adequate proof of Jeannie Ann's minority, the penalty imposable for the offense in Criminal Case No. 15164-R is reclusion perpetua.[71]

The Court also finds that accused-appellant cannot be convicted of rape or acts of lasciviousness under the information in Criminal Case No. 15368-R, which charges accused-appellant of a violation of R.A. No. 7610 (The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), "either by raping her or committing acts of lasciviousness." [72]

It is readily apparent that the facts charged in said information do not constitute an offense. The information does not cite which among the numerous sections or subsections of R.A. No. 7610 has been violated by accused-appellant.[73] Moreover, it does not state the acts and omissions constituting the offense, or any special or aggravating circumstances attending the same, as required under the rules of criminal procedure. Section 8, Rule 110 thereof provides:

Designation of the offense. –The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

The allegation in the information that accused-appellant "willfully, unlawfully and feloniously commit sexual abuse on his daughter [Jeannie Ann] either by raping her or committing acts of lasciviousness on her" is not a sufficient averment of the acts constituting the offense as required under Section 8, for these are conclusions of law, not facts.[74] The information in Criminal Case No. 15368-R is therefore void for being violative of the accused-appellant's constitutionally-guaranteed right to be informed of the nature and cause of the accusation against him.[75]

Although accused-appellant failed to call the attention of both the trial court and this Court regarding the defects of the information in Criminal Case No. 15368-R, the Court may *motu proprio* dismiss said information at this stage, pursuant to its ruling in *Suy Sui vs. People*, [76] because the information is a patent violation of the right of the accused to be informed of the nature and cause of the accusation against him and of the basic principles of due process. Moreover, an appeal in a criminal proceeding throws the whole case open for review, and it is the duty of the appellate court to correct such errors as might be found in the appealed decision, whether these errors are assigned or not.

It is likewise necessary to increase the award of damages by the trial court. The lower court in its decision ordered

accused-appellant to indemnify the complainant in the amount of Fifty Thousand Pesos (P50,000.00) only in each of the cases, representing moral damages. It failed to award the prescribed amounts for civil indemnity, the award of which is mandatory upon the finding of the fact of rape.[77] This civil liability ex delicto is equivalent to actual or compensatory damages in civil law.[78] It is not to be confused with moral damages, which is awarded upon a showing that the victim endured physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.[79]

Under prevailing jurisprudence, when the penalty imposed on the accused is reclusion perpetua, the amount of Fifty Thousand Pesos (P50,000.00) should be awarded as civil indemnity to the rape victim.[80] Thus, in Criminal Case Nos. 15163-R and 15164-R, an award of Fifty Thousand Pesos (P50,000.00) as civil indemnity for each count of rape is proper.

In addition to civil indemnity, moral damages are automatically granted to the victim in rape cases without need of proof for it is assumed that the private complainant has sustained mental, physical and psychological suffering.[81] The Court affirms the award by the trial court of Fifty Thousand Pesos (P50,000.00) as moral damages in Criminal Cases Nos. 15163-R and 15164-R, since said amounts are in accord with its current rulings.[82]

WHEREFORE, the Decision of the Regional Trial Court of Baguio City, Branch 6 in Criminal Cases Nos. 15163-R and 15164-R is hereby MODIFIED, as follows:

- In Criminal Case No. 15163-R, the accused-appellant is sentenced to suffer the penalty of reclusion perpetua and ordered to pay the victim the amounts of Fifty Thousand Pesos (P50,000.00) as civil indemnity and Fifty Thousand Pesos (P50,000.00) as moral damages;
- In Criminal Case No. 15164-R, the appellant is sentenced to suffer the penalty of reclusion perpetua, and ordered to pay the amounts of Fifty Thousand Pesos (P50,000.00) as civil indemnity and Fifty Thousand Pesos (P50,000.00) as moral damages.
- The Information in Criminal Case No. 15368-R is declared null and void for being violative of the accused-appellant's constitutionally-guaranteed right to be informed of the nature and cause of the accusation against him. Hence, the case against him is DISMISSED.

SO ORDERED.

Bellosillo, Vitug, Mendoza, Panganiban, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.
Davide, Jr., C.J., Puno, and Ynares-Santiago, JJ., on official business.
Quisumbing, J., no part in deliberations.

[1] Rollo, p. 11.

[2] Id., at 13.

[3] Id., at 15. The information in Criminal Case no. 15368-R was amended to correct the time of the alleged commission of the crime in the original information from “1987” to “1997” (see also Records, p. 56).

[4] TSN, November 27, 1997, pp. 4-5; April 2, 1998, pp. 4-5.

[5] TSN, April 2, 1998, pp. 2-4.

[6] TSN, April 3, 1998, pp. 2-4.

- [7] TSN, January 15, 1998, pp. 3-5; 16-17.
- [8] Sworn Statement of Jeannie Ann dela Cruz dated August 2, 1997, Exhibit “G,” Records, p. 10.
- [9] TSN, February 11, 1998, pp. 12-14
- [10] TSN, January 15, 1998, pp. 11-12.
- [11] TSN, February 11, 1998, p. 7.
- [12] TSN, January 15, 1998, pp. 12-14.
- [13] Id., at 9-11.
- [14] Id., at 14-18.
- [15] Id., at 18-19.
- [16] Id., at 19-20.
- [17] Id., at 20; TSN, February 11, 1998, pp. 9-10.
- [18] TSN, January 15, 1998, pp. 21-22.
- [19] Exhibit “G”, Records, p. 9.
- [20] TSN, February 11, 1998, pp. 14-17.
- [21] TSN, November 24, 1997, pp. 4-7. See also Dr. Bandonill’s Report, Living Case No. MG-97-18, Exhibit “A”, Records, p. 1.
- [22] TSN, November 27, 1997, pp. 6-7.
- [23] Exhibits “B,” “B-1,” “B-2,” “B-3,” “B-4,” “B-5,” “C” and “D,” Records, pp. 2-10.
- [24] TSN, November 27, 1997, pp. 9-16.
- [25] Id., at 22.
- [26] Exhibits “Q,” “T,” “U,” “V,” “W,” “X” and “Y,” Records, pp. 47, 50-51.
- [27] Exhibit “M,” , Id., at 45.
- [28] Exhibit “R,” Id., at 48.
- [29] Exhibit “S,” Id., at 49.
- [30] Exhibit “N,” Id., at 45.
- [31] Exhibit “P,” Id., at 46.
- [32] Exhibit “O,” Id.
- [33] TSN, November 27, 1997, pp. 5-7; July 7, 1998, pp. 2-9; Exhibits “N” to “Y,” supra.
- [34] TSN, November 27, 1997, pp. 23-26.
- [35] Id., at 29-31.
- [36] TSN, April 2, 1998, pp. 2-4.

- [37] TSN, April 3, 1998, pp. 2-4.
- [38] Id., at 23-25; TSN, April 14, 1998, pp. 16-17.
- [39] TSN, April 3, 1998, p. 5.
- [40] Id., at 5-13.
- [41] Id., at 13-15.
- [42] Id., at 16-18.
- [43] Exhibit "J," Folder of Exhibits, p. 20.
- [44] TSN, April 20, 1998, pp. 5-9.
- [45] Exhibit "Q-2," Records, p. 47.
- [46] TSN, May 5, 1998, pp. 6-8, 14-17.
- [47] TSN, May 12, 1998, pp. 3-9.
- [48] TSN, June 1, 1998, pp. 3-13.
- [49] TSN, 23 June 1998, pp. 2-6.
- [50] Records, pp. 219-220.
- [51] Rollo, p. 73.
- [52] Id., at 88-89.
- [53] Id., at 89.
- [54] People vs. De Guzman, G.R. Nos. 140333-34, December 11, 2001.
- [55] People vs. Yaoto, G.R. Nos. 136317-18, November 22, 2001; People vs. Rebato, G.R. No. 139552, May 24, 2001; People vs. Villadares, G.R. No. 137649, March 8, 2001, People vs. Saladino, G.R. Nos. 137481-84 & 138455, March 7, 2001.
- [56] People vs. Supnad, G.R. Nos. 133791-94, August 8, 2001.
- [57] RTC Decision, p. 15; Records, p. 212.
- [58] TSN, January 15, 1998, pp. 9-14.
- [59] Id.; Records, p. 211.
- [60] People vs. Agravante, G.R. Nos. 137297 & 138547-48, December 11, 2001; People vs. Yaoto, supra; People vs. Bernabe, G.R. No. 141881, November 21, 2001; People vs. Docena, 322 SCRA 820 (2000).
- [61] People vs. Alpe, G.R. No. 132133, November 29, 2001.
- [62] TSN, January 15, 1998, p. 10; TSN, February 11, 1998, pp. 12, 14.

[63] 324 SCRA 748 (2000).

[64] *Id.*, at 755.

[65] *People vs. Supnad*, *supra*.

[66] *People vs. Agravante*, *supra*; *People vs. Bernabe*, *supra*; *People vs. Gabon*, G.R. No. 127003, November 16, 2001.

[67] *People vs. Bayona*, 327 SCRA 190 (2000).

[68] See *People vs. Magdato*, 324 SCRA 785 (2000).

[69] The law took effect on December 31, 1993.

[70] *People vs. Baniqued*, G.R. Nos. 130653 and 139384, December 11, 2001; *People vs. Gabon*, G.R. No. 127003, November 16, 2001; *People vs. Ferolino*, G.R. Nos. 131730-31, April 5, 2000.

[71] See *Id.*; *People vs. Baniqued*, *supra*.

[72] *Rollo*, p. 15.

[73] Section 5, Article III of R.A. No. 7610 punishes: (a) the act of engaging in or promoting, facilitating or inducing child prostitution by acting as procurer of a child prostitute, inducing a person to be a client of a child prostitute, taking advantage of influence or relationship to procure a child as a prostitute, threatening or using violence to engage a child as a prostitute, or giving consideration to a child to engage him as a prostitute; (b) committing the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; (c) deriving profit or advantage from child prostitution, as owner or manager of the establishment where the prostitution takes place.

Section 6, Article III of the same law punishes as an attempt to commit child prostitution the act of being alone with a child inside a room or cubicle of a house, inn, hotel, motel, pension house, apartelle or other similar establishment when the person who is with the child is not the latter's relative. A person who receives services from a child in a sauna parlor, massage clinic, health club or other similar establishment shall also be punished for an attempt to commit child prostitution.

Under Section 7, Article IV of R.A. No. 7610, any person who engages in buying and selling of a child for money or any other consideration, or bartering a child shall be guilty of child trafficking.

Section 8 of the same law punishes as attempts to commit child trafficking the following acts: (a) a child traveling alone to a foreign country without valid reason therefore and without clearance from the Department of Social Welfare and Development or written permit or justification from the child's parents or legal guardian; (b) the execution by a pregnant mother of an affidavit of consent for adoption for consideration; (c) the recruitment by any person, agency, establishment or child-caring institution of women or couples to bear children for child trafficking; (d) the simulation of birth by a doctor, hospital, clinic official or employee or any other person for purposes of child trafficking; and (e) the finding by any person of children among low-income families, hospitals, clinics, nurseries, day-care centers or other child-caring institutions who can be offered for child trafficking.

Section 9, Article V, R.A. No. 7610 punishes any person who hires, employs, uses, persuades, induces or coerces a child to perform in obscene exhibitions and indecent shows, or to model in obscene publications or pornographic materials; or who sells or distributes such materials.

Section 10 of the same law punishes the following acts of neglect, abuse, cruelty or exploitation and other

conditions prejudicial to the child's development: (a) committing of any other act of child abuse or exploitation; (b) keeping or having in one's company a minor who is ten years or more one's junior in any public or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlor, beach or other tourist resort or similar places, provided the person and the child are not related within the fourth degree of consanguinity or affinity or any bond recognized by law, local custom or tradition, or acts in the performance of a social, moral or legal duty; (c) inducing, delivering or offering a minor to anyone prohibited by the law to keep or have in his company a minor; (d) allowing any person to take along with him any minor to any public or private place of accommodation, whether for occupancy, food, drink or otherwise, including residential places; (e) using, coercing, forcing or intimidating a street child or any other child to beg, act as conduit or middleman in drug trafficking or pushing, or to conduct any illegal activities.

[74] Lacson vs. Executive Secretary, 301 SCRA 298 (2000).

[75] Constitution, Article III, Section 14 (2).

[76] 92 Phil. 684 (1953).

[77] See People vs. De Guzman, supra; People vs. Supnad, supra.

[78] People vs. Dumlao, G.R. Nos. 130409-10, November 27, 2001; People vs. Ferrer, G.R. No. 142662, August 14, 2001.

[79] Article 2217, Civil Code.

[80] People vs. Carino, G.R. No. 131203, August 2, 2001.

[81] People vs. De Guzman, supra.

[82] Id.; People vs. Balas, G.R. No. 138838, December 11, 2001; People vs. Dumlao, supra.

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