

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO AGRAVANTE Y ZANTUA, ACCUSED-APPELLANT.

G.R. Nos. 137297 & 138547-48. December 11, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

These cases are here on automatic appeal from the decision,[1] dated October 16, 1998, of the Regional Trial Court, Branch 40, Daet, Camarines Sur, finding accused-appellant Ricardo Agravante guilty of three counts of rape committed against his daughter Maria and sentencing him in each case to death and to pay the victim the sum of P50,000.00 as moral damages.

The facts are as follows:

On November 26, 1994, the Provincial Prosecutor of Camarines Norte filed three informations for rape against accused-appellant in the RTC, Branch 40 of Daet, Camarines Norte. Except for the allegations of the dates and times of the rapes, the informations in the three cases, docketed as Criminal Case Nos. 8430-32, were similarly worded. They alleged -

That on or about _____[2] at the Resettlement Area, Barangay Matacong, San Lorenzo Ruiz, Camarines Norte, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did, then and there willfully, unlawfully, and feloniously commit sexual intercourse with one Maria Agravante y Vargas, a minor fourteen years of age, against the latter's will, to her damage and prejudice.

That the crime was committed with the aggravating circumstance of relationship, the accused being the father of the offended party.

CONTRARY TO LAW.[3]

Thereafter, the cases were jointly tried. The prosecution presented as its witnesses the complainant, Maria Agravante; Dr. Marcelito Abas, the medico-legal officer of the Camarines Norte Provincial Hospital; and Adelina Racho.

Maria testified that she was born on August 27, 1980, the child of accused-appellant by his wife, Evelyn Vargas.[4] In 1994, she was a freshman at the Matacong (San Lorenzo Ruiz National) High School located seven kilometers from their house in Matacong, San Lorenzo Ruiz, Camarines Norte. Because of the distance of their house to the high school, Maria stayed in a boarding house owned by Adelina Racho, going home only on Saturday mornings.

Maria testified that on the night of November 5, 1994, she was home with her father, herein accused-appellant, and the latter's ward, Gary Fraga. Accused-appellant and Gary Fraga slept in the living room, while Maria slept in her room. Accused-appellant's common-law wife, Virginia Bangayciso, had gone to a dance party. At around 7 o'clock in the evening, Maria woke up to find accused-appellant on top of her. She tried to push him, but

accused-appellant proved too strong for her. She was slapped and then forced to have sexual intercourse with accused-appellant. After he was through, accused-appellant left. Maria lighted a lamp and went to the kitchen, where she washed off blood and a whitish substance from her private parts. She then returned to her bedroom and went to sleep. At around midnight, however, accused-appellant was back and raped her again. She tried to resist him, but he punched her on the thighs. The following day, Maria returned to her boarding house. She saw the owner, Adelina Racho, but did not tell her what had happened for fear of her father.

On November 19, 1994, Maria came home for the weekend. Because she did not arrive until noon, she was scolded and given some lashes by accused-appellant. After lunch, her father's common-law wife left to attend a birthday party in a place about a kilometer away from their house. On the pretext that he wanted her to pick lice from his hair, accused-appellant assaulted her when she came to him. Maria pleaded with him, reminding him, "I am your daughter, why are you doing this to me?," but her pleas fell on deaf ears. Accused-appellant just the same raped her. After he was through, accused-appellant left and went to fetch his common-law wife, leaving his daughter sobbing. He returned with his common-law wife at 4 o'clock in the afternoon.

Maria did not tell anyone about her misfortune until November 26, 1994, when she told Susan Racho, the daughter of the owner of the boarding house, that she was not going home that weekend because of what had happened to her. Susan told Maria's story to her mother, Adelina Racho, who took Maria to Danny Manabat, a minister of the Iglesia ni Kristo (INK). Manabat and Enrico Amor, a police captain, in turn took them to the Philippine National Police headquarters at Camp Wenceslao Q. Vinzons in Dogongan, Daet, Camarines, where she gave a sworn statement (Exh. A).[5] Maria was examined at the Camarines Provincial Hospital.[6] The results of her examination (Exh. C) showed the following:

GENITAL EXAMINATION:

= Hymenal laceration[s] (old) 3:00, 6:00, 9:00 o'clock

LABORATORY RESULT: Negative for sperm cells.[7]

According to the examining physician, Dr. Marcelito Abas, the three hymenal lacerations could have been caused by the "forcible penetration" of a "turgid or erected penis." He explained that the "old lacerations" were at least five to seven days old since lacerations heal after three days. As for the absence of sperm, Dr. Abas opined that the same might have been washed away during urination.[8]

Adelina Racho was the last prosecution witness to testify. She was a day care worker at the Department of Social Work and Development (DSWD) and Maria was a boarder in their house located near the high school where Maria was studying. According to Adelina Racho, she was told that Maria did not want to go home on November 26, 1994, and that when she inquired about the reason, she was told it was because Maria had been raped by her father. Adelina Racho said she took Maria to the PNP at Camp Wenceslao Q. Vinzons, where they gave their statements. She said it was Maria's decision to have a medical examination at the Provincial Hospital. Afterwards, Maria went to live with INK elder Danny Manabat until the DSWD in Sorsogon, Sorsogon took custody of her.[9]

The defense presented as witnesses Maria's high school adviser, Rosalia Merca; the barangay captain of Guinobatan, Bacud, Camarines Norte, Noel Gadil; accused-appellant; and the latter's neighbor, Lilia Fraga Medollar.

Rosalia Merca affirmed her certification (Exh. 1),[10] dated November 28, 1994, that in 1994, Maria was absent from class six times in September, i.e., September 7, 8, 12, 13, 24, and 26, four times in October, i.e., October 4, 5, 6, and 17, and eight times in November, i.e., November 2, 3, 4, 11, 16, 18, 25, and 28.[11]

Barangay Captain Noel Gadil affirmed the certification (Exh. 2)[12] he issued on January 8, 1997 to the effect

that there was no dance party held in his barangay on November 5, 1994.[13]

Testifying in his behalf, accused-appellant Ricardo Agravante stated that after he and Maria's mother, Evelyn Vargas, had separated in 1985, Maria remained in his custody. From February to November 20, 1994, he worked as a laborer of the Philippine National Oil Company (PNOC) assigned to a job site in the municipality of San Lorenzo Ruiz. He and his common-law wife, Virginia Bangayciso, and Maria lived in a resettlement area 50 kilometers away. Accused-appellant claimed that he stayed at the job site from Monday to Saturday and went home only when shuttle service was available. For this reason, he seldom saw Maria, who came home from the boarding house only on weekends. Accused-appellant estimated the boarding house to be eight kilometers from his house at barangay Matacong.

Accused-appellant denied having raped his daughter. He claimed that she filed rape charges against him because she was given lashes by him on November 19, 1994. He said he did this only because she did not attend school and joined the Iglesia ni Kristo and seldom came home. Accused-appellant claimed that after he had punished Maria, a friend fetched him and his common-law wife to attend a neighbor's party. Accused-appellant admitted that in the evening of November 5 and 19, 1994, he slept in their house. He claimed, however, that Maria slept in a separate room which had a lock. He said he only came to know about the charges against him in the evening of November 26, 1994 when the police took him for questioning.[14]

Lilia Fraga Medollar was a neighbor of the Agravantes. She corroborated accused-appellant's claim that in the afternoon of November 19, 1994, she fetched accused-appellant and the latter's common-law wife and the three of them went to a birthday party of the child of a neighbor, Pacita Catayon, staying there until 8 o'clock in the evening. Lilia Fraga Medollar belied Maria's testimony that her (Lilia's) son Gary Fraga[15] slept in the house of the Agravantes the night of November 5, 1994, because, according to her, she took her son from them on October 25, 1994, after he had run away from home.[16]

On October 16, 1998, the trial court rendered its decision, the dispositive portion of which reads:

IN THE CIRCUMSTANCES, the Court finds the accused Ricardo Agravante y Zantua guilty of the crime[s] charged beyond reasonable doubt and is hereby sentenced to suffer the penalty of death in each of the criminal cases No. 8430, 8431 and 8432 [sic].

Accordingly, said accused is hereby condemned to pay Maria Agravante the sum of P50,000.00 in each of the three cases or a total sum of P150,000.00 as moral damages.

IT IS SO ORDERED.[17]

On December 13, 1999, accused-appellant filed a motion for new trial on the ground of newly discovered evidence based on an affidavit executed by his niece, Criselda Agravante, on November 27, 1999. In her affidavit, Criselda stated that, like Maria, she was recruited into the INK and persuaded by Adelina Racho to work as a househelp because she might just become the victim of incestuous rape which was the "trend of the times"; that she stayed in Adelina Racho's house until her father Roberto came to take her; that in several conversations, Maria told her how much she enjoyed her membership in the INK and how she hated her "stepmother," who beat her, and her father, who did not protect her from being abused; and that she knew that Maria had been sleeping with her boyfriend Niño.

In its resolution of January 25, 2000, this Court denied accused-appellant's motion for new trial on the ground that the affidavit did not constitute newly discovered evidence. It was explained:

Rule 121, §2 of the 1988 Rules on Criminal Procedure allows a new trial to be held on the ground of newly discovered evidence on the following conditions: (a) the evidence was discovered after the trial, (b) it could not

have been discovered and produced at the trial despite reasonable diligence, and (c) it is of such weight that, if admitted, would probably change the judgment.

In this case, the evidence supporting accused-appellant's motion cannot be considered newly discovered. It had been in existence even before the trial, only that the witness, Criselda Agravante, who knew about the matter was not presented during the trial. In effect, it amounts to no more than forgotten proof which would not justify an order to conduct new trial. (*People v. Penesa*, 81 Phil. 398 (1948)) Even if Criselda told accused-appellant what she knew only after he had been convicted, still it has not been shown that her testimony constitutes evidence that could not have been unearthed without the exercise of reasonable diligence. After all, Criselda is a niece of accused-appellant. Although she had moved to Pampanga, it appears that she and accused-appellant had maintained contact. By her own admission, she was aware of the filing of the rape charges against accused-appellant. Yet it took her five years from learning of the charges against accused-appellant to signify her willingness to give evidence in his favor.

Finally, the Court does not think that her testimony is of such weight that it would probably cause the acquittal of herein accused-appellant because the affidavit is merely of corroborative value and does not really concern facts constituting the crimes subject of these cases. (*People v. Samaniego and Ong Inc.*, 95 Phil. 218 (1954)) It does not incontrovertibly show that accused-appellant did not commit the crimes with which he was charged.[18]

Accused-appellant then filed his brief in which he alleged that -

1)

The trial court grossly failed to consider facts and circumstances of the case indicating that private complainant's charge of Rape and testimony are tainted by a semblance of being a malicious concoction.

2)

The trial court erred in giving undue weight and credence to the testimony of private complainant despite the fact that her testimony indicates inconsistency, lies, and improbabilities.

3)

The trial court erred when it engages in giving undue weight to the evidence presented by the prosecution despite the existence of clear, positive and credible evidence effectively controverting the evidence presented by the prosecution.

4)

The trial court erred when it engages in wild conjectures and harped on alleged weakness of appellant's evidence to demolish the cause and the strong and credible defense raised by the Accused.

5)

The trial court erred in not acquitting the accused-appellant on ground of reasonable doubt and for failing to appreciate facts indicating that the instant case is merely a malicious concoction perpetrated by the private complainant and her cohorts.[19]

I. The sole issue presented by accused-appellant concerns the credibility of complainant Maria Agravante.

A. Accused-appellant contends that Maria Agravante simply concocted the rape charges against him. He says that his daughter was bitter towards him because he gave her lashes when he learned that she had been skipping classes in order to attend INK activities. Proof of this, he claims, is the fact that it was an INK member, Adelina Racho, who helped his daughter lodge a complaint in the PNP.

We find the contention to be without merit. First of all, as pointed out by the Solicitor General, the members of the INK who helped Maria file charges against accused-appellant are responsible members of the community: Adelina Racho is a day care worker of the DSWD, Danilo Manabat is an INK minister, while Enrico Amor is a police captain. If they helped Maria, it was because, as she said, she did not have any relative to help her.[20] Indeed, the claim that Maria had been "brainwashed" into filing the charges is belied by her steadfastness in seeking the prosecution of her father even after she was no longer living in the house of INK minister Danny Manabat and her refusal to give in to pressure from her relatives to desist.[21] Second, when Maria was asked by the public prosecutor:

Now, you were repeatedly asked by the counsel for the accused that if ever your father is found guilty by this Honorable Court in these three (3) cases, he might be meted out the death penalty and you said you are aware of that. And you also said when asked by the counsel for the accused that you also love your father. So, may I ask you, what is your motive in filing these cases against your father?,

she answered: "Because he raped me, sir." [22]

No woman, much less one who is of tender age, would concoct a charge of sexual abuse and endure the degradation and humiliation of a public trial, where she would be forced to reveal the lurid details of her misfortune, if she had not really been raped. This is particularly so where, as in these cases, the accused is complainant's own father for whom, it may be assumed, every child has the deepest reverence and respect in our culture.[23]

B. Accused-appellant points out alleged improbabilities and inconsistencies in the testimony of Maria, to wit:

1. It is contended that the fact that Maria went back to sleep after she had been raped on November 5, 1994 as if nothing happened to her cannot be the reaction of one who had just gone through a harrowing experience.

What accused-appellant perceives to be a cavalier reaction (going back to sleep as if nothing happened to her) appears more to be a desperate attempt on her part to deny what had happened. This reaction is consistent with her other actions after the first rape, i.e., the washing of her private parts and changing her underwear. Indeed, there is no standard reaction of a victim to the crime of rape. Rape is both a physical and emotional assault causing tremendous stress on the victim.[24] After her harrowing experience, Maria found solace in sleep.

2. It is contended that Maria's claim that accused-appellant whipped her on November 19, 1994 because she came home late is improbable because accused-appellant was aware of the distance which Maria had to travel to reach home. According to accused-appellant, what is more probable is that he gave her some lashings because she had been absent from class many times attending INK activities.

But accused-appellant knew even before this incident of Maria's absences because, as Maria's adviser testified, Maria's "stepmother" saw her twice about Maria's school attendance.[25] As for accused-appellant's claimed opposition to Maria's joining the INK, Maria testified that in fact she had obtained his permission.[26]

Thus, it appears that accused-appellant chastised his daughter because the latter did not come home the previous weekend (November 12-13, 1994).[27] Accused-appellant himself admitted this when he testified that one of the reasons he whipped Maria is that she seldom came home.[28]

3. It is contended that Maria's claim that she did not miss any class before the rape incidents[29] is belied by the certification (Exh. 1) issued by her adviser showing that Maria indeed incurred absences in September and October, 1994.

This inconsistency concerns only a minor collateral matter and does not detract from Maria's testimony that she

had been raped by accused-appellant in November. For the same reason, accused-appellant's claim that the certification (Exh. 2) of Barangay Captain Noel Gadil that there was no dance held on November 5, 1994 contradicts Maria's testimony that accused-appellant's common-law wife attended the said affair has little relevance to the rape charges. In any case, Gadil himself admitted that he issued the certification only on January 8, 1997, three years after the supposed event, not on the basis of any record kept by him or his office but only from memory.[30]

4. According to accused-appellant, Maria's testimony that Gary Fraga slept in their house on November 5, 1994 is contradicted by the testimony of Lilia Fraga Medollar that earlier, on October 25, 1994, she took her son Gary from the Agravantes.

However, Lilia Fraga Medollar herself testified that it took six months from the time her son Gary ran away sometime in October 1994 before she came to know his whereabouts and subsequently took him from the Agravantes.[31]

Thus, accused-appellant has not shown any compelling reason for this Court to depart from the trial court's finding that Maria was telling the truth when she accused accused-appellant of raping her. The inconsistencies and improbabilities in her testimony relate to minor, trivial, and inconsequential matters which do not alter the essential fact in the crime of rape, which is carnal knowledge through force or intimidation.[32] In fact, they may even be considered a badge of truthfulness which erases any suspicion that Maria is a rehearsed witness.[33] On the other hand, Maria's claim that she had been raped is corroborated by the medical finding that she suffered hymenal lacerations at the 3, 6, and 9 o'clock positions.[34]

II. Art. 335 of the Revised Penal Code, as amended by R.A. No. 7659, provides for the imposition of the death penalty on the offender in rape cases if the victim is under eighteen (18) years of age and the offender is, among others, a parent of the victim. As a qualifying circumstance which increases the range of the penalty, the concurrence of the minority of the victim and her relationship to the offender must be both alleged and proven.[35]

In these cases, while the informations allege that complainant was a "minor fourteen years of age" at the time of the commission of the rapes and that accused-appellant is the "father of the offended party," only the relationship of accused-appellant to the complainant has been sufficiently established.[36] To be sure, the minority of complainant (14 years of age at the time of the commission of the rapes) was the subject of the parties' stipulation of facts.[37] However, the stipulation of facts was not signed by accused-appellant as required by Rule 118, §2 of the Revised Rules of Criminal Procedure which provides that "No agreement or admission made or entered during the pre-trial conference shall be used in evidence against the accused unless reduced to writing and signed by him and his counsel." This requirement is mandatory. As held in *Fule v. Court of Appeals*: [38]

The conclusion is inevitable, therefore, that the omission of the signature of the accused and his counsel, as mandatorily required by the Rules, renders the Stipulation of Facts inadmissible in evidence. The fact that the lawyer of the accused, in his memorandum, confirmed the Stipulation of Facts does not cure the defect because Rule 118 requires both the accused and his counsel to sign the Stipulation of Facts. What the prosecution should have done, upon discovering that the accused did not sign the Stipulation of Facts, as required by Rule 118, was to submit evidence to establish the elements of the crime, instead of relying solely on the supposed admission of the accused in the Stipulation of Facts.

The stipulation of facts, therefore, cannot be used as evidence of complainant's age at the time of the rapes in question.

Nor is there sufficient evidence of complainant's age. The testimonies of complainant concerning her age and that

of her father, herein accused-appellant, concerning this matter are insufficient. In *People v. Tundag*,^[39] in which the complaints alleged that the victim was 13 years old at the time of the rapes, it was held that it was error for the trial court to take judicial notice of the victim's age even if the defense admitted the victim's minority. The Court emphasized that there must be independent proof, such as a birth certificate, of the age of the victim. In *People v. San Agustin*,^[40] this Court held that the latter's minority had not been sufficiently established notwithstanding the appellant's admission that the victim was 13 years of age. Judicial notice of the victim's age may be taken if the victim is 10 years old or below,^[41] but not where, as in this case, the victim is alleged to be 14 years old when she was raped.

As no independent evidence was presented by the prosecution to prove the minority of complainant, it was error for the trial court to find accused-appellant guilty of qualified rape and to sentence him to death.

However, the award of moral damages in the amount of P50,000.00 in each case must be sustained. There is no need to prove during trial that the victim suffered mental, physical, and psychological trauma as these are presumed. In addition, an award of P50,000.00 in civil indemnity must also be made in each case in accordance with case law.^[42] Because of the aggravating circumstance of relationship, an award of exemplary damages in the amount of P25,000.00 should also be given.^[43]

WHEREFORE, the decision of the Regional Trial Court, Branch 49, Daet, Camarines Sur is MODIFIED by finding accused-appellant Ricardo Agravante y Zantua guilty of three counts of simple rape and accordingly sentencing him in each case to suffer the penalty of reclusion perpetua and to pay complainant Maria Agravante P50,000.00 as civil indemnity and P25,000.00 as exemplary damages in addition to the amount of P50,000.00 awarded by the trial court as moral damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Vitug, Kapunan, Panganiban, Quisumbing, Pardo, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

Puno, J., on official leave.

Buena, J., abroad on official business.

[1] Initially heard by Judge Gregorio E. Manio, Jr., the case was decided by Judge Honesto V. Marcelo.

[2] Criminal Case No. 8430 ("on or about 12:00 midnight of November 5, 1994"); Criminal Case No. 8431 ("on or about 7:00 o'clock in the evening of November 5, 1994"); Criminal Case No. 8432 ("on or about 1:00 o'clock in the afternoon of November 19, 1994").

[3] Records (Criminal Case No. 8430), p. 1; Records (Criminal Case No. 8431), p. 1; and Records (Criminal Case No. 8432), p. 1.

[4] TSN, p. 2, Dec. 4, 1996 (morning session).

[5] Records (Criminal Case No. 8430), pp. 3-5.

[6] TSN, pp. 2-37, March 6, 1996.

[7] Records (Criminal Case No. 8430), p. 6.

[8] TSN, pp. 9-10, Dec. 6, 1996.

[9] *Id.*, pp. 17-42.

- [10] Folder of Exhibits.
- [11] TSN, pp. 2-9, Dec. 2, 1997.
- [12] Folder of Exhibits.
- [13] TSN, pp. 10-15, Dec. 2, 1997.
- [14] TSN, pp. 2-37, Feb. 17, 1998.
- [15] Gary bears his mother's maiden surname, being the illegitimate child of Lilia Fraga Medollar.
- [16] TSN, pp. 3-45, April 28, 1998.
- [17] Decision, p. 18; Rollo, p. 30.
- [18] Rollo, p. 96.
- [19] Appellant's Brief, p. 15; Rollo, pp. 204-205.
- [20] TSN, p. 31, Dec. 4, 1996 (morning session).
- [21] Id., pp. 23, 29-31.
- [22] TSN, pp. 18-19, Dec. 4, 1996 (afternoon session).
- [23] See *People v. Ariola*, G. R. Nos. 142602-05, Oct. 3, 2001.
- [24] *People v. Santos*, G.R. Nos. 138308-10, Sept. 26, 2001.
- [25] TSN, p. 7, Dec. 2, 1997.
- [26] TSN, p. 6., Dec. 4, 1996 (morning session).
- [27] Id., p. 24.
- [28] TSN, p. 10, Feb. 17, 1998.
- [29] TSN, p. 5, Dec. 4, 1996 (morning session).
- [30] TSN, p. 13, Dec. 2, 1997.
- [31] TSN, pp. 8, 20, April 28, 1998.
- [32] *People v. Veloso*, 330 SCRA 602 (2000).
- [33] *People v. Perez*, G.R. No. 113265, March 5, 2001; *People v. Austria*, 334 SCRA 398 (2000).
- [34] *People v. Montejo*, G.R. No. 133475, March 26, 2001; *People v. Pine*, G.R. No. 133441, Nov. 29, 2000.
- [35] *People v. Gonzales*, G.R. Nos. 139445-46, June 20, 2001; *People v. Pagdayawon*, G.R. No. 130522, Feb. 15, 2001; *People v. Marquez*, G.R. Nos. 137408-10, Dec. 8, 2000.
- [36] TSN (*Ricardo Agravante*), p. 6, Feb. 17, 1998.
- [37] Records (*Criminal Case No. 8430*), pp. 22-23.

[38] 162 SCRA 446, 449 (1988).

[39] 342 SCRA 704 (2000).

[40] G.R. Nos. 135560-61, Jan. 24, 2001.

[41] *People v. Rivera*, G.R. No. 139180, July 31, 2001; *People v. Tipay*, 329 SCRA 52 (2000).

[42] *People v. Lor*, G.R. No. 133190, July 19, 2001; *People v. Baniguid*, 340 SCRA 92 (2000); *People v. Victor*, 292 SCRA 186 (1998); *People v. Gementiza*, 285 SCRA 478 (1998).

[43] *People v. Catubig*, G.R. No. 137842, Aug. 23, 2001.

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