

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOMAS MARCELLANA, ACCUSED-APPELLANT.

G.R. Nos. 137401-03. February 06, 2002

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PER CURIAM:

This is an automatic review of the decision dated January 21, 1999 of the Regional Trial Court, Fifth Judicial Region, Branch 7, Legazpi City in Criminal Cases Nos. 7584, 7585 and 7586 for three (3) counts of Rape, the dispositive portion of which reads:

“PREMISES CONSIDERED, the Court finds the accused TOMAS MARCELLANA, as having committed beyond reasonable doubt the crime of RAPE against her (sic) daughter FRANCIA MARCELLANA, who was sixteen (16) years old at the time of the incidents complained of. He is therefore declared GUILTY of the crime as charged on three (3) counts.

“Pursuant to the provisions of Article 335 of the Revised Penal Code, as amended, Under Criminal Case No. 7584, the accused is hereby sentenced to suffer the penalty of DEATH. He is likewise ordered to pay the victim the amounts of Php50,000.00, as damages for the offense of rape, Php30,000.00 as moral damages, and Php20,000.00 as exemplary damages.

“Under Criminal Case No. 7585, accused is likewise hereby sentenced to suffer the penalty of DEATH and ordered to pay the victim the amounts of Php50,000.00 as damages for the offense of rape, Php30,000.00 as moral damages, and Php20,000.00 as exemplary damages.

“Under Criminal Case No. 7586, accused is also hereby sentenced to suffer the penalty of DEATH and ordered to pay the amounts of Php50,000.00 as damages for the offense of rape, Php30,000.00 as moral damages, and Php20,000.00 as exemplary damages.

“SO ORDERED.”[1]

The antecedents of the case are as follows:

Private complainant Francia Marcellana testified that her father, accused-appellant Tomas Marcellana, had been raping the former since 1992, the last of which happened on Novembers 10 and 12, and December 5, 1996. The incidents usually happen at about 7 o'clock in the morning when Francia is left alone in their house, as her classes start at 11:00 a.m. At this time, her brothers and sisters are already in school while her mother is in the farm. Accused-appellant also goes to the farm early but returns before 7:00 a.m., at which time Francia's ordeal at the hands of her father begin. He would drag Francia inside the bedroom, undress her, lay her down on the bed and tie her hands and feet to the farm posts of the bed. Accused-appellant would then take off his shorts and brief, lay on top of Francia and make a push and pull movement for about three minutes. Thereafter, accused-appellant would put on his brief and shorts, untie one of the hands of Francia and leave her. The latter would then untie her other hand and feet.[2] She could not tell her mother as well as her siblings about the incidents because she was always threatened by accused-appellant. It was only in December of 1996 when Francia, suspecting that she might be pregnant, gathered enough courage to reveal her ordeal to her mother.[3] Since her mother did not initially believe

her, Francia went to her high school teacher[4] who helped her secure assistance from the Department of Social Welfare and Development.[5]

Dr. Jose Cope, the Municipal Health Officer of Daraga, Albay, conducted a medical examination on Francia and found one deep old hymenal laceration at 1:00 o'clock and multiple superficial lacerations at 3:00, 5:00, 9:00, 11:00 and 12:00 o'clock positions.[6]

On January 15, 1997, a criminal complaint was filed against accused-appellant Tomas Marcellana on the basis of which accused-appellant was charged in three separate informations for Rape, thus:

“CRIMINAL CASE NO. 7584

“The undersigned PROSECUTOR II, upon sworn written complaint of private complainant FRANCIA MARCELLANA, hereby accuses TOMAS MARCELLANA, of the crime of RAPE, committed as follows:

“That on November 10, 1996 at 7:00 o'clock in the morning, more or less, at Barangay Kilicao, Municipality of Daraga, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste designs, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his own 16 years old daughter, FRANCIA MARCELLANA, against her will and consent, to her damage and prejudice.

“ACTS CONTRARY TO LAW.”[7]

“CRIMINAL CASE NO. 7585

“The undersigned PROSECUTOR II, upon sworn written complaint of private complainant FRANCIA MARCELLANA, hereby accuses TOMAS MARCELLANA, of the crime of RAPE, committed as follows:

“That on November 12, 1996 at 7:00 o'clock in the morning, more or less, at Barangay Kilicao, Municipality of Daraga, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste designs, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his own 16 years old daughter, FRANCIA MARCELLANA, against her will and consent, to her damage and prejudice.

“ACTS CONTRARY TO LAW.”[8]

“CRIMINAL CASE NO. 7586

“The undersigned PROSECUTOR II, upon sworn written complaint of private complainant FRANCIA MARCELLANA, hereby accuses TOMAS MARCELLANA, of the crime of RAPE, committed as follows:

“That on December 5, 1996 at 7:00 o'clock in the morning, more or less, at Barangay Kilicao, Municipality of Daraga, province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste designs, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his own 16 years old daughter, FRANCIA MARCELLANA, against her will and consent, to her damage and prejudice.

“ACTS CONTRARY TO LAW.”[9]

Upon arraignment on August 28, 1997, accused-appellant pleaded not guilty to each of the offenses charged.[10]

In disowning liability, accused-appellant simply denied the same and argued that the charges were mere fabrications as a consequence of an isolated incident wherein he reprimanded her daughter, herein complainant, for going home late.[11]

After trial on the merits, accused-appellant was found guilty beyond reasonable doubt of the crimes charged and

was sentenced accordingly. Hence, this case before us for review.

In his brief, accused-appellant raised the following errors:

“ASSIGNMENT OF ERRORS

“I.

“THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT.

“II.

“THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT IN EACH OF THE THREE (3) RAPE CHARGES.

“III.

“ASSUMING ARGUENDO THAT ACCUSED-APPELLANT INDEED HAD SEXUAL INTERCOURSE WITH PRIVATE COMPLAINANT, NONETHELESS, THE COURT ERRED IN IMPOSING UPON HIM THE SUPREME PENALTY OF DEATH, CONSIDERING THAT THE ESTABLISHED FACTS SHOW THAT, IF EVER A CRIME IS COMMITTED, THE SAME IS ONLY QUALIFIED SEDUCTION.”[12]

The first and the second assigned errors were explained simultaneously in appellant’s brief. Consequently, We will examine and discuss them jointly.

Three indications, allegedly upholding accused-appellants innocence, were laid down. First, accused-appellant points to the delay in reporting the incidents complained of.

We are not persuaded. The delay and initial reluctance of a rape victim to make public the assault on her virtue is neither unknown or uncommon.[13] Particularly in incestuous rape, this Court has consistently held that delay in reporting the offense is not indicative of a fabricated charge.[14]

“Delay in reporting a rape incident neither diminishes complainant’s credibility nor undermines the charges of rape where the delay can be attributed to the pattern of fear instilled by the threats of bodily harm, specially by one who exercised moral ascendancy over the victims. (underscoring supplied)”[15]

Moreover, the young victim might just opt to bear the ignominy and pain in private rather than reveal her shame to the whole world.[16] She may also be too overwhelmed with fear and confusion as to why her very own father would commit such a nefarious act.[17]

In the case before us, Francia’s ordeal in the hands of her father began in 1992.[18] Based on her Certificate of Live Birth,[19] Francia was then only twelve years old. At that young age and with the naivete and innocence that comes with provincial upbringing, the callow Francia was undoubtedly under her father’s moral authority and influence. This ascendancy over her together with the constant threats from her father, Francia could not possibly be expected to come out in the open. It took her four more years of prolonged abuse as well as the threat of a more humiliating circumstance – that of being pregnant – to gather enough courage in finally revealing her ordeal.[20] Withal, we do not consider the delay to be fatal.

With regard to the second indication, accused-appellant lays too much emphasis on the accuracy of the frequency offered by Francia regarding the number of times she was raped.

In *People vs. Alicante*,[21] this Court aptly said,

“The other inconsistencies refer to minor details such as how many times she was raped during a certain

month. These do not create a reasonable doubt as to whether or not accused-appellant raped his daughter. It must be remembered that the victim is a girl of tender age who was sexually attacked by her father several times during a period of less than a year.

“It is not expected that Richelle would remember every single detail of every single rape. It is understandable, even anticipated, that there would be minor lapses and inaccuracies when a young girl is made to recount, detail by detail her frightful ordeal under the hands of her father. Considering the age of the victim, she is more prone to error than an adult person. The grueling experience of testifying in public, face to face with her perpetrator and being questioned by hostile lawyers would undoubtedly intimidate and confuse a young girl.”

In *People vs. Villar*,^[22] We held that the burden of exactness cannot be imposed on a young victim who claimed to have been raped for more than 100 times in a span of one year.

Considering private complainant Francia Marcellana’s harrowing experience lasting for four (4) years^[23], it is with more reason that we should not demand such a high degree of accuracy and detail on the poor victim. What is important is that Francia remained steadfast in her claim that her father raped her.^[24]

As to the third indication of accused-appellant’s alleged innocence, he argued and we quote:

“The prosecution failed to rebut defense’s theory that it was Rudy Completo, Francia’s fiancé, who had sexual intercourse with her. It must be remembered that Rudy and Francia were set to be wed in January 1997 and yet, Rudy decided not to pursue with the wedding. Does this fact not raise doubt that the supposed groom backed out from the marriage plan because, any way, he has already had carnal knowledge with his would-be-bride?

“Further, likewise undisputed from the records is the fact that it was not only once that private complainant went home drunk, and that when she attended a ball one time, she returned home late after the socials. Could it not be possible that in one or all occasions Francia Marcellana committed sexual indiscretions which is now being charged against herein accused?”^[25]

The foregoing attempt to blacken Francia’s character is but a futile attempt to discredit her unfaltering testimony. These suggestions mock the intelligence of the court and sorely test its patience. Accused-appellant should, at the very least, offer some basis to support these suppositions. Generally, no young woman would accuse her father of so grave a crime as rape unless she was truly wronged^[26] and is now seeking retribution for the abominable violation against her.^[27] Neither would she publicly disclose a humiliating and painful experience if it were not the truth.^[28] We also find it inconceivable that the young victim would devise or fabricate a story that she was raped by her own father considering that family honor is at stake, and that she might just send him to jail.^[29]

In the present case, not only was Francia’s testimony unwavering, it was also clear, convincing and straightforward.^[30] More importantly, her credibility was bolstered beyond reproach by her spontaneous emotional breakdown during trial.^[31]

With regard to accused-appellants’ third and final assigned error, we find the same to be both repulsive to this Court’s luminosity and that of the young Francia’s person. In the words of Chief Justice Andres R. Narvasa, “Of all so called heinous crimes, none perhaps more deeply provokes feelings of outrage, detestation and disgust than incestuous rape.”^[32] No daughter in her right mind would consent to having carnal knowledge with her own father.^[33]

Besides, accused-appellant’s reliance on the case of *People vs. Castillan* is misplaced. The peculiarities of that case are:

1) the complainant and the accused were sweethearts; and

2) the complainant's testimony showed inherent lack of credibility on crucial points.

In contrast, the relationship between accused-appellant and Francia is that of a father and daughter. As such, the rape contemplated here is quite different from that in Castillan. There, the crime of rape is that alleged to have been committed by force. Where, the rape is committed by a father against his own daughter, the father's moral ascendancy and influence over the latter substitutes for violence and intimidation.[34] Moreover, failure to shout or offer tenacious resistance will not make a rape victim's submission voluntary.[35]

As a last note, on accused-appellant's overtones that he should only be held liable for qualified seduction,[36] we said:

"The accused charged with rape cannot be convicted of qualified seduction under the same information. Then, too, rape and qualified seduction are not identical offenses. While the two felonies have one common element which is carnal knowledge of a woman, they significantly vary in all other respects." [37]

In view of the foregoing, we uphold the decision of the trial court finding accused-appellant guilty beyond reasonable doubt of three (3) counts of rape.

In accordance with recent jurisprudence, accused-appellant should indemnify the victim Francia Marcellana the amount of PhP75,000.00 for each of the three (3) counts of rape since these were committed or effectively qualified by circumstances under which the death penalty is authorized by applicable amendatory laws.[38] The award of moral damages in favor of Francia should be increased from PhP30,000.00 to PhP50,000.00 in each of the three counts of rape without need of proof save for the conviction of accused-appellant.[39] The award of exemplary damages is deleted for lack of legal basis.[40]

Four Justices of the Court maintain their position that R.A. No. 7659 is unconstitutional insofar as it prescribes the death penalty. Nevertheless they submit to the ruling of the majority that the law is constitutional and the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the decision under review convicting accused-appellant Tomas Marcellana for three (3) counts of rape and sentencing him to DEATH for each of the three counts is AFFIRMED, with the MODIFICATION that accused-appellant is hereby ordered to pay the following:

a)

the amount of PhP75,000.00 as civil indemnity for each of the three counts of rape: and

b)

the amount of PhP50,000.00 as moral damages for each of the three counts of rape.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let certified copies thereof, as well as the records of this case, be forwarded without delay to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Quisumbing, and Carpio, JJ., abroad on official business.

[1] RTC Decision, p. 16, ROLLO.

- [2] TSN, November 13, 1997, pp. 10-20.
- [3] TSN, November 13, 1997, pp. 20-21.
- [4] Mrs. Herminia Esparlas.
- [5] TSNs, November 13, 1997, pp. 21-22; and February 5, 1998, pp. 5-6, and 8-10.
- [6] TSN, November 13, 1997, pp. 3, and 5.
- [7] Amended Information for Criminal Case No. 7584, p. 3, ROLLO.
- [8] Ibid., p. 4, ROLLO.
- [9] Amended Information for Criminal Case No. 5, ROLLO.
- [10] Certificate of Arraignment in Criminal Case No. 7584, dated August 28, 1997, p. 23, RECORDS Vol. I; Certificate of Arraignment in Criminal Case No. 7585, dated August 26, 1997, p. 20, RECORDS Vol. II; and Certificate of Arraignment in Criminal Case No. 7586, dated August 26, 1997, p. 17, records Vol. III.
- [11] TSN, October 29, 1998, pp. 4-6.
- [12] Appellant's Brief, pp. 30-31, ROLLO.
- [13] People vs. Cabana, 331 SCRA 569, 581 [2000].
- [14] People vs. Silvano, 309 SCRA 362, 392 [1999].
- [15] People vs. Padil, 318 SCRA 795, 807 [1999].
- [16] Ibid., 318 SCRA 795, 807-808 [1999].
- [17] People vs. Narido, 316 SCRA 131, 145-146 [1999].
- [18] TSN, November 13, 1997, p. 17.
- [19] Exh. "E," p. 7, RECORDS.
- [20] TSN, November 13, 1992, pp. 17 and 21.

[21] 332 SCRA 440, 453-454 [2000].

[22] 322 SCRA 393, 400 [2000].

- [23] TSN, November 13, 1992, p. 17.
- [24] Ibid., p. 21.
- [25] Appellant's Brief, p. 39, ROLLO.
- [26] People vs. Mangila, 325 SCRA 586, 597 [2000].
- [27] People vs. Razonable, 330 SCRA 562, 574 [2000].
- [28] People vs. Alicante, 332 SCRA 440, 455 [2000]; see also People vs. Pineda, 311 SCRA 368, 380 [1999].
- [29] People vs. Razonable, 330 SCRA 562, 575 [2000]; see also People vs. Bation, 305 SCRA 253, 269-270 [1999].

[30] TSN, November, 13, 1997, pp. 10-15, 18-19, and 19-20.

[31] TSN, November 13, 1997, p. 14; see *People vs. Sancha*, 324 SCRA 646, 663 [2000]; *People vs. Alquizalas*, 305 SCRA 367, 374 [1999]; *People vs. Bea, Jr.*, 306 SCRA 653, 659 [1999]; *People vs. Ramos*, 312 SCRA 137, 147 [1999]; and *People vs. Mosqueda*, 313 SCRA 694, 707 [1999].

[32] *People vs. Baculi*, 246 SCRA 756, 758 [1995].

[33] *People vs. Traya*, 332 SCRA 499, 505 [2000].

[34] *People vs. Traya*, 332 SCRA 499, 513-514 [2000]; *People vs. Javier*, 311 SCRA 122, 138-139 [1999]; *People vs. Burce*, 269 SCRA 293, 314 [1997] citing *People vs. Matrimonio*, 215 SCRA 613, 632 [1992].

[35] *People vs. Vergel*, 316 SCRA 199, 212 [1999].

[36] Appellant's Brief, pp. 43-44, ROLLO.

[37] *People vs. Javier*, 311 SCRA 122, 139 [1999].

[38] *People vs. Sancha*, 324 SCRA 646, 669 [2000]; see also *People vs. Ramos*, 312 SCRA 137, 157 [1999]; *People vs. Bation*, 305 SCRA 253, 271 [1999]; and *People vs. Prades*, 293 SCRA 411, 430 [1998].

[39] *People vs. Alicante*, 332 SCRA 440, 470 [2000]; see also *People vs. Sancha*, 324 SCRA 646, 669 [2000]; *People vs. Padil*, 318 SCRA 795, 811 [1999]; *People vs. Vergel*, 316 SCRA 199, 213-214 [1999]; *People vs. Ramos*, 312 SCRA 137, 151 [1999]; and *People vs. Bation*, 305 SCRA 253, 271 [1999].

[40] Article 2230, Civil Code; see *People vs. Alquizalas*, 305 SCRA 367, 379 [1999].

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