PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO DOGAOJO Y MORANTE, ACCUSED-APPELLANT.

G.R. Nos. 137834-40. December 03, 2001

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PER CURIAM:

Accused-appellant Domingo Dogaojo y Morante was charged before the Regional Trial Court of Malolos, Bulacan with seven counts of rape allegedly committed against his minor daughter, Melinda Dogaojo. The trial court found accused-appellant guilty of all the charges and sentenced him to suffer seven death penalties.[1] The case was elevated to this Court on automatic review.

The first six Informations which contained the same allegations except the date of the commission of the offense alleged:

> "That on or about the 21[st] day of March 1996, (22nd day of March, 1996 for Crim. Case No. 1339-M-97; 26th day of March, 1996 for Crim. Case No. 1340-M-97; 13[th] day of April, 1996 for Crim. Case No. 1341-M-97; 21st day of April, 1996 for Crim. Case No. 1342-M-97; 2nd day of May, 1996 for Crim. Case No. 1343-M-97) in the municipality of San Jose Del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously with lewd design, by means of force and intimidation, have carnal knowledge of his 11 year old daughter Melinda A. Dogaojo, against her will and consent.
>
> Contrary to law."[2]

The seventh Information alleged:

> "That on or about the 17th day of December, 1996, in the municipality of San Jose del Monte, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously with lewd design, by means of force and intimidation, have carnal knowledge of his 12 year old daughter Melinda Dogaojo against her will and consent.
>
> Contrary to law."[3]

Accused-appellant pleaded not guilty to the charges.[4]Trial followed.

For the prosecution, Melinda Dogaojo testified that accused-appellant Domingo Dogaojo is her father. She said that he violated her seven times on various dates in 1996.[5] She was born on November 19, 1984.[6]

The first incident happened on March 21, 1996 at 11:30 in the morning in their house at Barangay Kaybanban, San Jose Del Monte, Bulacan. At that time, Melinda's mother, Mila, and her younger brothers, Arnold and Albert, were at the well washing clothes. Melinda was alone in the room inside their house when her father, Domingo, entered and pushed her to the wooden bed. She fell down. He began to remove her clothes. Melinda tried to resist by pushing and kicking him. Domingo, however, succeeded in removing her short pants and underwear. He also removed his short pants and underwear. Thereafter, he pulled her feet and spread her legs while she continued to push and kick him. Then he lay on top of her, fondled his organ and inserted it into her vagina by making a push

and pull movement for about one minute. She felt pain in her private part. Domingo got up when he heard Melinda's brothers coming. He put on his short pants and told Melinda not to tell anybody about what happened. He threatened to kill her if she does. Melinda fixed herself as Domingo went out of the house. When she saw her mother, they talked about various things but she did not tell her about the sexual assault because she was afraid of her father who looked panicky and red-faced at that time.[7]

The second incident occurred on March 22, 1996 in the same house. Domingo, Mila, Arnold, Albert and Melinda were lying on the wooden bed in the order mentioned. Around 1:00 in the morning, Melinda was roused from her sleep when Domingo got up and went to her side. He pushed her two brothers toward her mother. Then he undressed her. She wept while resisting his advances. She pushed him and swayed her body. After her clothes had been removed, Domingo laid on top of Melinda and held her hands to keep her from moving. He inserted his penis into her vagina and made a push and pull movement for about one minute. Melinda again felt pain in her genitalia. After satisfying his lust, Domingo stood up. The movement awoke Mila who asked Domingo what he was doing. He told her that he was just looking for something. Mila turned to Melinda and asked her why she was not sleeping. She answered that she was awakened by a mosquito. Melinda went back to sleep and kept silent about the incident. Domingo also went back to bed beside Mila.[8]

The deed was repeated three times more -- at 12:00 midnight on April 13, 1996, at 11:00 in the evening on April 21, 1996, and at 10:30 in the evening on May 21, 1996. On all occasions, Domingo succeeded in having sexual intercourse with Melinda against her will.[9]

Prior to these dates, however, on March 26, 1996 at 2:00 in the afternoon, Domingo once again abused Melinda. Melinda was standing outside the house beside the "kakawate" tree when her father summoned her to come inside. At that time, Melinda's mother was at her sister's house and her brothers were also out playing. When Melinda entered the room, Domingo pushed her to the wooden bed and removed her short pants and underwear. Domingo also removed his clothes. Melinda continued to cry as she resisted Domingo's advances. She swayed her body and pushed him. But he mounted her and made a push and pull movement for about three minutes, causing pain in her organ. Thereafter, he stood up. Melinda saw a white substance come out of Domingo's organ. Domingo put on his short pants. Looking mad, he told Melinda not to report the incident. Melinda cried as she wore her short pants.[10]

The last episode occurred at 8:00 in the morning of December 17, 1996 in the family's new house. Melinda woke to find her naked father lying on top of her. He removed her short pants and underwear and inserted his penis into her vagina. As before, Melinda swayed her body and pushed him. She tried to get up but Domingo prevented her. Domingo made a push and pull movement while lying on top of Melinda. After two minutes, he stood up because a white substance came out of his organ. He wiped the white substance and told Melinda not to tell anybody about what happened. Domingo went out of the room. Melinda again kept silent about the sexual abuse.[11]

A week after the last incident, Melinda moved to the house of her sister, Vangie. She related to Vangie what her father had done to her. Vangie, in turn, informed their mother about the story, but the latter refused to believe and left them on their own to seek redress. Vangie accompanied Melinda to the police authorities to report the rape and to give her sworn statement. Thereafter, they went to the National Bureau of Investigation (NBI) for physical examination.[12]

Dr. Antonio Vertido, Medico-Legal Officer of the NBI, testified on the result of the physical examination. It yielded the following findings:[13]

> "GENERAL PHYSICAL EXAMINATION:
>
> Height: 145.0 cms. Weight: 85 lbs.

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> Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory subject.
>
> Breasts developed, hemispherical, doughy, Areolae, 2.0 cms. in diameter, brown. Nipples, 0.7 cm. in diameter, brown, protruding.
>
> GENITAL EXAMINATION:
>
> Pubic hair, fine, short, scanty. Labia and labia majora, gaping. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, moderately tall, moderately thick, intact. Hymenal orifice, measures 2.0 cms. in diameter. Vaginal walls, tight. Rugosities, prominent.
>
> CONCLUSIONS:
>
> 1. Physical virginity preserved."

Domingo Dogaojo and Mila Dogaojo testified for the defense.

Domingo testified that he and his wife have eight living children. Three are staying with them, namely, Jay-Ar, Arnold and Ambet. Their daughter. Melinda. has been living with their other child since 1995. She seldom goes to their home.[14]

Domingo denied raping Melinda on the dates alleged by the prosecution. He posed an alibi. He stated that he worked as mason-carpenter in various construction projects and he usually stayed at the work site from Monday to Saturday. He would go home only at 6:00 or 7:00 in the evening of Saturday. In 1996, he worked at Palmera Construction in San Jose Del Monte and he slept at the construction site during weekdays.[15]

Domingo further testified on the possible motive of Melinda in filing the complaint against him. He said that he had an argument with Melinda regarding her having a boyfriend. He confronted her twice about the matter. During the first confrontation, Melinda got mad and walked out. On the second instance, Melinda answered back, prompting him to hit her with a belt. Melinda left the house and stayed with her siblings.[16]After three weeks, he learned that a complaint has been filed against him.[17]He also said that Melinda might have filed the complaint because of the prodding of his mother-in-law, Melinda's grandmother who spoils her and provides for all her needs. He said that his mother-in-law detested him because she did not want her daughter, Mila, to marry him. She allegedly wanted a wealthy husband for Mila. He also stated that he had a previous altercation with his mother-in-law regarding the latter's alleged extramarital affair. As a result, his mother-in-law filed a complaint against him before the Barangay Captain. The Barangay Captain, however, ruled in his favor.[18]

Domingo's testimony was corroborated by his wife, Mila.[19]

The trial court found Domingo guilty of all the charges and sentenced him to seven death penalties and ordered him to pay private complainant the amount of P50,000.00 as moral damages. The dispositive portion of the Decision stated:

> "WHEREFORE, the foregoing considered, this Court hereby finds accused DOMINGO DOGAOJO y MORANTE GUILTY beyond reasonable doubt of seven (7) counts of Rape defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659, and hereby sentences him to suffer seven (7) DEATH penalties (one for each count) and to pay private complainant Melinda Dogaojo the amount of Fifty Thousand Pesos (P50,000.00) as moral damages. With costs."[20]

In this appeal, accused-appellant raises the lone assignment of error:

> "The trial court gravely erred in finding the accused guilty of seven (7) counts of rape despite the fact that the physical evidence failed to corroborate the charges."[21]

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Accused-appellant contends that Melinda's testimony should not be given credence as it is not corroborated by physical evidence. He harps on the medico-legal report indicating that the hymen of the alleged victim is still intact.

The Office of the Solicitor General, instead of filing an appellee's brief, filed a manifestation and motion in lieu thereof. It is the position of the Solicitor General that the crime committed was merely attempted rape. It argues that although it was shown that accused-appellant has done several acts leading to the consummation of the crime, the prosecution failed to prove the element of carnal knowledge. It asserts that the evidence of the prosecution regarding carnal knowledge are conflicting. On one hand, Melinda testified that Domingo made a push and pull movement and she felt pain in her private part. On the other hand, the medico-legal report showed that there was no sexual contact as evidenced by the fact that the victim's hymen was found to be intact. These conflicting evidence, it is argued, put to doubt proof of carnal knowledge.

We sustain the factual findings of the trial court.

Accused-appellant was charged with qualified rape of an under-aged relative which is classified as heinous crime by Section 11 of RA 7659.[22] To convict the accused of the offense, the prosecution must allege and prove the ordinary elements of (1) sexual congress, (2) with a woman, (3) by force and without consent, and in order to warrant the imposition of death penalty, the additional elements that (4) the victim is under eighteen years of age at the time of the rape, and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[23]In the case at bar, the prosecution was able to prove the existence of all these elements beyond a shadow of doubt.

The defense did not dispute the fact that Melinda is the daughter of accused-appellant and that she was only eleven years old at the time of the alleged commission of the offense. They did not present evidence refuting the testimony of Melinda that accused-appellant is her father[24]and that she was born an November 19, 1984.[25] In fact, in their testimonies, both Domingo and Mila Dogaojo referred to Melinda as their daughter.[26]Moreover, when asked in court about Melinda's age, Domingo said that she was already fourteen (14) years old.[27]

Melinda also recounted clearly and candidly how her father ravished her on seven occasions. We do not see any reason to doubt the veracity of her testimony which remained consistent and unwavering even on cross-examination. The Court has consistently adhered to the principle that the testimonies of child victims of rape are generally accorded full weight and credit, especially when no ill motive is shown to move her to testify falsely against the accused.[28]We are not convinced that Melinda, as the defense would like us to believe, filed the complaint against her father because of a previous altercation and because of the prodding of her grandmother. It would take the most senseless kind of depravity for a young daughter to fabricate a story which would send her father to death only because he scolded her or because they do not see eye to eye. A child, innocent and naive to the ways of the world, is not likely to accuse her own father of a very serious crime such as incestuous rape if it was not the plain truth, or if her motive was not purely to bring the offender to justice.[29]

We disagree with the assertion of accused-appellant and the Solicitor General that the testimonial and the documentary evidence of the prosecution are conflicting. On the contrary, we find that the testimony of Melinda jibes with the medico-legal report submitted by Dr. Antonio Vertido of the NBI. The physical examination of Melinda revealed that her hymen is still intact. This is consistent with her testimony that her father lay on top of her for only a few minutes and that he was able to insert only a small portion of his organ into her genitalia. She also testified during cross-examination that she did not notice any bleeding in her private part after the various rape incidents, except after the fourth incident, which bleeding could have been caused by her monthly period which lasted for ten days.

She testified thus:

"xxx xxx xxx

Q:

And you are claiming that this penis of your father was inserted in your vagina?

A: Yes, sir.

Q:

What did you feel?

A:

Painful, sir.

Q:

Did you feel that the full penis of your father was inserted in your vagina?

A:

No, sir.

Q:

How deep did the penis of your father reach in your vagina?

A:

I do not know.

Q:

But that was very painful as you mentioned?

A:

Yes, sir. He had just inserted "konti lang po".

Q:

But do (sic) you really feel pain?

A:

Yes, sir.

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Q:

But did you observe if there was blood on the first alleged rape?

A:

None.

Q:

How about on the second time?

A:

None, sir.

Q:

On the third?

A:

On the 4[th], I noticed blood.[30]

xxx xxx xxx

Q:

You mentioned also that you felt pain in this alleged rape? (referring to the third incident)

A:

Yes, sir.

Q:

But you did not see blood?

A:

None, sir.[31]

xxx xxx xxx

Q:

So in this 4[th] incident, you mentioned you noticed blood also?

A:

The following morning.

Q:

Not on the very moment?

A:

No, sir.

Q:

And where did that blood come from?

A:

I do not know.

Q:

Where did you notice that blood?

A:

The following morning. I noticed that on my panty when I moved my (b)owel.[32]

xxx xxx xxx

Q:

By the way, when you noticed blood in your panty, what did you do?

A:

I mentioned that to my mother.

Q:

What did your mother ask you

A:

She told me that maybe that is menstruation.

Q:

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Did you not tell your mother about the alleged rape by your father?

A:

No, sir.

Q:

So how long does (sic) that blood last?

A:

10 days.[33]

xxx xxx xxx

Q:

So in this time, you did not notice any blood, did you notice any blood? (referring to the seventh incident)

A:

None, sir."[34]

The absence of bleeding affirms the fact that the hymen has not been torn, thus the medical finding that Melinda's physical virginity has been preserved. The lack of laceration in the hymen, however, is not incompatible with the fact of rape. Hymenal laceration is not an element of rape for even the slightest penetration of the labia by the male organ is equivalent to consummated rape.[35]Dr. Antonio Vertido admitted upon inquiry by the trial court that it is possible that the male organ touches the opening of the vagina and not cause laceration. He testified:

"xxx xxx xxx

Q:

In this particular case based on your finding it is possible that there was penetration?

A:

It is difficult to prove that there was a penetration because the hymen was intact. The or(i)fice is small and it (is) impossible (for) the average erect penis to penetrate.

Q:

What about the slightest penetration?

A:

What do you mean slightest penetration, your Honor?

Q:

Slightest penetration; what you are telling the Court is the full penetration of the penis.

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A:

Well, the male penis touches the opening, your Honor, then sometimes it does not lacerate.

Q:

So it is possible the penis touches the vagina?

A:

It is possible, your Honor.

xxx xxx xxx."[36]

We reject the theory of the Solicitor General that the crime committed was merely attempted and not consummated rape. Melinda categorically stated that her father inserted his organ into her vagina on all seven occasions of rape. She was certain that her father was able to penetrate her because she felt pain in her genitalia. This refutes the theory of the Solicitor General that there was no penetration of the male organ into the labia of the female organ, but merely a touching of its outer surface. The pain in Melinda's private part could only be caused by the penetration, albeit slight, of the male organ into its opening, Our ruling in People vs. Palicte[37] finds application in the case at bar. We held in that case:

"The fact that there was no deep penetration of the victim's vagina and that her hymen was still intact does not negate the commission of rape. According to Dr. Jose Ladrido, Jr., who has been in medico-legal cases since 1963 and has examined many rape victims, if the victim is a child, as in the case of Edievien, rape can be done without penetration. Without penetration the male organ is only within the lips of the female organ, and there is interlabia or sexual intercourse with little, none, or full penetration, although he admitted that it was also possible that there was no rape since the hymen was intact.

In the case before us, Edievien repeatedly testified that the accused inserted his penis into her vagina for half an hour, as a consequence of which she suffered pain. This, at least, could be nothing but the result of penile penetration sufficient to constitute rape. Being a virgin, as found by the examining physician, her hymenal resistance could be strong as to prevent full penetration. But just the same, penetration there was, which caused the pain. For, rape is committed even with the slightest penetration of the woman's sex organ. Mere entry of the labia or lips of the vagina, as in this case of Edievien, is sufficient to warrant conviction for consummated rape."

In an attempted crime, the offender commences the commission of a felony directly by overt acts, but does not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance.[38] A felony is consummated when all the elements necessary for its execution and accomplishment are present.[39] Rape under the first paragraph of Article 335 of the Revised Penal Code, as amended by RA 7659 is consummated when there is penetration, no matter how slight, of the victim's genitalia under any of the circumstances enumerated therein.[40] The prosecution in this case has proven the consummation of the offense through the testimony of the victim which we find credible.

Hence, we find that the trial court did not err in convicting accused-appellant of all the charges. We note, however, that the trial court awarded only P50,000.00 as moral damages to the victim, but failed to award civil indemnity. In line with prevailing jurisprudence, the civil indemnity ex delicto for the victim is P75,000.00 for each count of rape, aside from the moral damages in the amount of P50,000.00, likewise for each count of rape.[41] Furthermore, since the offender is the victim's own father, we find an award of exemplary damages in the amount of P25,000.00 to be in order.[42]

Six members of the Court are of the view that the act committed by accused-appellant was attempted rape, not consummated rape. They hold that there was no evidence of sexual congress however slight. The victim, Melinda, testified that her father inserted his penis into her vagina "a little" causing pain. He made a push and pull movement while mounted on top of her for a few minutes (2-3 minutes) until a white substance came out of his organ. This fact shows that there was no penetration of penis into the female sex organ even slightly. Dr. Antonio S. Vertido, Medico-Legal Officer, NBI, declared when asked if it was possible that there was penetration of the victim's vagina that "it is difficult to prove that there was penetration because the hymen was intact." He admitted, though, that it was possible the penis touched the vagina. Touching by the penis of the opening of the vagina is not consummated rape, only attempted rape.[43] There is no physical evidence showing that the accused's penis touched the pudendum.[44] True, entry of the penis into the lips of the said organ even without rupture or laceration of the hymen is enough.[45]In this case, however, the doctor testified that "penetration" was impossible because the orifice is small. In People vs. Bation,[46] the court held that it is essential that there be penetration of the female organ no matter how slight. There must be entry of the penis into the labia majora of the female victim, however slightly[47]or there is entrance of the male organ within the labia or pudendum of the female organ.[48] Although the rule is that when the victim cries rape, she says all constituting the commission of the offense. However, case law requires that the victim's testimony must find support in the physical evidence. In this case, six members of the Court find that the physical evidence does not support the victim's testimony.

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

IN VIEW WHEREOF, the Decision appealed from is AFFIRMED with the MODIFICATION that accused-appellant is ordered to indemnify the victim, Melinda Dogaojo, in the amount of P75,000.00 as civil indemnity and P50,000.00 as moral damages for each count of the offense charged and proved, and to pay her the amount of P25,000.00 as exemplary damages.

In accordance with Section 25 of Republic Act No. 7659 amending Article 83 of the Revised Penal Code, upon finality of this Decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of her pardoning power.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.
Buena, J., voted and participated in the deliberation of this case.

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[1] Decision penned by Judge Gregorio S. Sampaga, Rollo, pp. 20-30.

[2] Rollo, pp. 7-12.

[3] Id., p. 13.

[4] Original Records, p. 25.

[5] TSN, November 24, 1997, pp. 3-4.

[6] Id., p.27.

[7] Id., pp. 4-9.

[8] Id., pp. 9-13.

[9] Id., pp. 16-21.

[10] Id., pp. 13-16.

[11] Id., pp. 21-24.

[12] Id., pp. 24-27.

[13] Exhibit "B", Original Records, p. 14.

[14] TSN, April 27, 1998, pp. 2-3.

[15] Id., pp. 3-4.

[16] Id., pp. 5-6.

[17] Id., p.8.

[18] Id., pp. 6-8.

[19] Id., pp. 2-7.

[20] Rollo, pp. 29-30.

[21] Appellant's Brief, Rollo, p. 51.

[22] An Act to Impose the Death Penalty on Certain Heinous Crimes Amending for that Purpose the Revised Penal Code, As Amended, Other Special Penal Laws, and for other Purposes (Took effect December 31, 1993).

[23] People vs. Lasola, 318 SCRA 241 (1999); People vs. Silvano, 309 SCRA 362 (1999).

[24] TSN, November 24, 1997, p. 3.

[25] Id., p. 27.

[26] TSN, April 27, 1998, pp. 3 - 9; TSN, May 20, 1998, pp. 2 -7.

[27] TSN, April 27, 1998, p. 5.

[28] People vs. Fraga, 330 SCRA 669 (2000).

[29] People vs. Guiwan, 331 SCRA 70 (2000); People vs. Razonable, 330 SCRA 562 (2000).

[30] TSN, November 28, 1997, pp. 8-9.

[31] Id., pp. 13-14.

[32] Id., p. 15.

[33] Id., pp. 15-16.

[34] Id., p. 16.

[35] People vs. Balora, 332 SCRA 403 (2000); People vs. Tano, 331 SCRA 449 (2000); People vs. Barredo, 329 SCRA 120 (2000).

[36] TSN, February 20, 1998, p. 4.

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[37] 229 SCRA 543 (1994).

[38] Article 6, Revised Penal Code; People vs. Tayaba, 62 Phil 559 (1935); People vs. Guevarra, 155 SCRA 327 (1987); People vs. Torio, 318 SCRA 345 (1999); People vs. Tabarangao, 303 SCRA 623 (1999).

[39] Article 6, Revised Penal Code.

[40] People vs. Licanda, 331 SCRA 357 (2000).

[41] People vs. Alicante, 332 SCRA 440 (2000).

[42] People vs. Traya, 332 SCRA 499 (2000); People vs. Lao, 249 SCRA 137 (1995).

[43] People vs. Campuhan, 329 SCRA 270 (2000).

[44] People vs. Gastador, 365 Phil. 209, 223 (1999).

[45] People vs. Marcelo, 364 Phil. 576, 588 (1999).

[46] 364 Phil. 731,748 (1999); see also People vs. Gecomo, 254 SCRA 82, 91(1996).

[47] People vs. Oliver, 362 Phil. 414 (1999).

[48] People vs. Alojado, 364 Phil. 713, 724 (1999).

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