THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PABLO SANTOS, ACCUSED-APPELLANT.

G.R. Nos. 138308-10. September 26, 2001

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PER CURIAM:

These cases are here on automatic review from the decision[1] of the Regional Trial Court, Branch 40, Palayan City, finding accused-appellant guilty of three counts of rape and sentencing him to death for each count of the crime and ordering him to pay complainant Maricel Santos y Gallema P50,000.00 as compensatory damages, P50,000.00 as moral damages, and P30,000.00 as exemplary damages.

Three separate informations were filed against accused-appellant which are similarly worded except with reference to the dates of the commission of the crimes, to wit:

> "That on or about the 12[th] day of August, 1995,[2] at about 10:00 o'clock in the evening, in Barangay San Vicente, Municipality of Laur, Province of Nueva Ecija and within the jurisdiction of this Honorable court, the above-named accused, with lewd design, [through] force and intimidation and taking advantage of nighttime, did then and there, willfully, unlawfully and feloniously have carnal knowledge of his daughter, Maricel Santos, fourteen years of age, against her will and to her damage and prejudice.
>
> "CONTRARY TO LAW."

Accused-appellant pleaded not guilty to the crimes charged, whereupon the cases were consolidated and jointly tried.

The prosecution presented evidence showing the following:

Maricel Santos is the oldest of three daughters of accused-appellant Pablo Santos and Anastacia Santos y Gallema. In 1993, Anastacia went to Abu Dhabi to work as a domestic helper, leaving her three daughters to the care of accused-appellant.[3] She came home for a vacation sometime in July and stayed here up to September 5, 1995.[4]

Late in the evening of August 12, 1995, Maricel, then 14 years old, was sitting on a "bangkito" outside the room where she and her sisters usually slept on the second story of their house. She saw her father, herein accused-appellant, come upstairs. Suddenly, accused-appellant embraced Maricel and kissed her on the lips and neck while touching her private parts. Maricel struggled as she pleaded with her father "Huwag po, huwag po." ("Please don't, please don't.") But accused-appellant did not heed her pleas. He laid her on the floor, undressed her, and then went on top of her. Maricel tried to push accused-appellant away but he threatened to kill her if she persisted in doing so. Maricel could not remember how long accused-appellant lay on top of her but she felt pain and her vagina bled as accused-appellant succeeded in raping her. She continued to plead with her father, "Huwag po, huwag po" ("Please don't, please don't") but her pleas fell on deaf ears. After accused-appellant was through, accused-appellant left and went to sleep in another part of the house, but not after he had warned Maricel that he would kill her if she told anyone what had happened that night. At the time of the incident, only Maricel and her two younger sisters, Mary Rose and Malou, who were both asleep inside the room, were in their house. The

records do not show the whereabouts that night of Maricel's mother, who was then spending her vacation in the country.

Knowing accused-appellant's bad temper and having been warned not to tell anybody what accused-appellant had done to her, Maricel kept her silence. However, her ordeal on August 12, 1995 was not the last. It was repeated one evening in September 1995. While Maricel was watching television, accused-appellant embraced and kissed her. As accused-appellant started to remover her clothing, Maricel pleaded with his father, but, like the first time, accused-appellant was unmoved by his daughter's pleas as he succeeded in raping her.

Accused-appellant raped Maricel for the third time late in the evening of December 18, 1995. That night, as Maricel lay asleep beside her two sisters inside their room, she was suddenly awakened when accused-appellant lay beside her. Accused-appellant embraced and kissed her and then forced himself on her. She resisted but she was slapped by accused-appellant several times so that eventually she gave up.[5]

The following day, December 19, 1995, Maricel decided to report the matter as she could no longer endure her suffering at the hands of accused-appellant. On that day, accused-appellant kicked her. Maricel asked her younger sister, Mary Rose, to call their maternal grandmother, Carmen Gallema, so that she could tell the latter about her ordeal. Maricel met Carmen in front of the house of another daughter of Carmen. Maricel tearfully told her grandmother, "Inang, binaboy po ako ni Tatay.") ("Inang, Father raped me.") Carmen took immediate action. She asked someone to fetch accused-appellant's parents in Bulacan so that they could take him home because she feared that her sons would kill him for what he had done to Maricel. Carmen took Maricel and her two sisters into her custody after accused-appellant was take to Bulacan by his parents.[6]

On January 2, 1996, Carmen and Maricel reported the rapes to the police of the Municipality of Laur.[7] Maricel wrote Anastacia in Abu Dhabi to tell her about the incident. As her mother wanted, Maricel filed criminal charges against accused-appellant.

On January 2, 1996, Maricel was examined by Dr. Felimon Veneracion, the Rural Health Physician of the municipality. Dr. Veneracion did not find any sign of physical injury on Maricel's body. He concluded, however, that Maricel was no longer a virgin because of the presence of an old healed laceration on her hymen at the 3 o'clock position.[8] He explained that generally there are several causes for hymenal lacerations, such as the insertion of a hard blunt object in the vagina, like an erect penis. Although he could not estimate the time when the laceration was inflicted, considering Maricel's disclosure and the interval between the time of examination and the dates of the alleged commission of he crimes, Dr. Veneracion said that it was possible that the laceration was caused by sexual abuse.[9]

Accused-appellant denied the allegations against him. He claimed that Carmen, his mother-in-law, fabricated the rape charges against him so that she would receive the monthly remittances of P3,000.00 which his wife, Anastacia, was sending from Saudi Arabia. He testified that Carmen had always disapproved of him because of his bad temper when drunk and that she resented him more when Anastacia had to work abroad to support their family. He claimed that since August 1995 Carmen had been trying to cause their separation as husband and wife. On the other hand, accused-appellant claimed that Maricel was sore at him because he reprimanded her when he caught her writing a love letter to a boyfriend and because, on December 19, 1995, he kicked her for ignoring his question as to why she was sitting in their backyard with her head resting on her hand ("nakatalungko").[10] According to accused-appellant, it was impossible for him to have raped Maricel on August 12, 1995 and in September of that year because his wife, Anastacia, was then home from her work abroad at that time.[11]

On March 23, 1999, the trial court rendered its decision, the dispositive portion of which reads:

> "WHEREFORE, this Court finds the accused, Pablo Santos, guilty beyond reasonable doubt of multiple rape

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> committed on August 12, 1995, September, 1995 and December 18, 1995 upon his own daughter, Maricel Santos, and hereby sentences him to suffer the penalty of DEATH for each of the three offenses in Criminal Case Nos. 0673-P, 0674-P, and 0675-P; to indemnify the private offended party in the amount of P50,000.00 as compensatory damages; the further amounts of P50,000.00 by way of moral damages and P30,000.00 by way of exemplary damages. The accused is further ordered to pay the costs of the suits in all these cases."[12]

Hence, this appeal. Accused-appellant makes the following assignment of errors:

> "I. THAT THE LOWER COURT ERRED IN NOT ACQUITTING THE APPELLANT FOR INSUFFICIENCY OF EVIDENCE AND/OR REASONABLE DOUBT.
>
> "II. THAT THE LOWER COURT ERRED IN SENTENCING APPELLANT TO SUFFER THE PENALTY OF DEATH FOR EACH OF THE ABOVE-ENTITLED CRIMINAL CASES."

Accused-appellant argues that Maricel's claim is belied by the medical report, which shows that there was no sign of physical injuries found on her body, and by the delay in reporting the crime, which he says, is inconsistent with "the natural reaction of an outraged maiden despoiled of her honor." He contends that the fact it was Carmen Gallema, his mother-in-law, who accompanied and assisted complainant in filing the criminal complaints in this case shows that Carmen merely trumped up the rape charges against him.

After due consideration of the evidence in this case, we find no reason for reversing accused-appellant's conviction.

The fact that no physical injuries were found on complainant's body and that she did not report the first rape until two months after its occurrence do not render complainant's testimony incredible. It is settled that the absence of physical injuries does not negate a claim of sexual abuse.[13] Moreover, the only instance of physical violence by accused-appellant on the occasion of the rapes was when he slapped Maricel on December 18, 1995. Considering the two weeks which lapsed from that time and the time Maricel was examined, no sign of physical injuries on Maricel's body could be expected. But the examination did reveal an old hymenal laceration which the physician said could have been caused by penile penetration.[14]

Nor is the delay in reporting the rapes proof that they had not been committed. Complainant had been threatened by her father with death if she reported the matter to the authorities. Indeed, in incestuous rape, the rapist employs psychological terror, which makes the victim submit to repeated acts of abuse over a period of time, rather than physical violence. The rapist takes advantage of his blood relationship, proximity, ascendancy, and influence over his victim both to commit the rape and to silence the victim.[15] The child is thus rendered helpless. In the case of older children, they understand the implications for the family once the abuse is reported: possible imprisonment of the perpetrator who may be the sole breadwinner of the family, stigmatization, shame, and the possibility that their families may hold them responsible for all these. For this reason, young girls often conceal their ordeal for as long as they can endure, which could extend even for 10 years,[16] especially when threatened with harm.[17]

It is not accurate to say that there is a typical reaction or norm of behavior among rape victims.[18] Rape is both a physical and emotional assault on the victim causing her tremendous mental stress. Hence, the reaction, and even the coping behavior, of rape victims varies.[19] Maricel's silence is understandable because accused-appellant is known for his violent temper, especially when drunk. Accused-appellant himself admitted, "Nakita po nila na barumbado po ako noon." ("They saw that I was a violent man then.")[20] Maricel thus had reason to fear her father.

On the other hand, save for his bare assertion that Carmen had always disapproved of him and that she had been trying to break his marriage with Anastacia, accused-appellant had not presented any concrete evidence to prove Carmen's alleged ill will toward him. Carmen, who was presented both as a prosecution witness and as a hostile

witness for the defense, denied accused-appellant's allegations and claimed that she had always counseled her daughter to preserve her marriage with accused-appellant because marriage is a sacred institution.[21] If she did not trust accused-appellant, she would not have allowed her granddaughters, then all of tender age, to stay with him after their mother Anastacia had left to work abroad in 1993.

Be that as it may, we find it hard to believe that a grandmother would expose her teenage granddaughter to the humiliation and stigma of a rape trial simply because of her hatred of her son-in-law[22] or her desire to get the P3,000.00 monthly remittance her daughter was sending from abroad.

Incestuous rape is not an ordinary crime that can be easily invented because of its heavy psychological and social toll.[23] On top of the humiliation of a trial and life-long stigmatization resulting from the experience, the victims and their families must deal with a crisis that goes to the very core of a familial integrity. We do not think a daughter like Maricel would have sought the prosecution of her father and the imposition on him of the supreme penalty of death had it not been for her desire to seek justice. As the trial court observed, Maricel's testimony was clear, straightforward, candid, and innocent.[24] We find no reason to doubt the correctness of the trial court's assessment of the evidence of the prosecution and the defense.

Coming now to the penalty, to justify the imposition of death in incestuous rape, both the relationship of the victim with the rapist and her minority must be alleged and proven by the prosecution.[25] In these cases, the three informations alleged the presence of the qualifying circumstances of relationship and minority and these allegations were duly proven in the trial. The birth certificate of Maricel[26] states that she was born on April 15, 1981. Thus, on the dates she was raped by accused-appellant, Maricel was only 14 years old and, therefore, a minor. Moreover, it states that accused-appellant is her father and the latter admitted that Maricel is his daughter. Hence, the trial court correctly imposed the death penalty.

Four (4) members of the Court, although maintaining their adherence to the separate opinions expressed in People vs. Echegaray[27] that R.A. No. 7659, insofar as it prescribes the penalty of death, is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly imposed.

However, the award of damages to complainant should be revised. The trial court's award of P50,000.00 to complainant as civil indemnity should be increased to P75,000.00 in accordance with current case law.[28] The award of moral damages in the amount of P50,000.00 is correct it being assumed that the victim has suffered moral injuries as a result of the rape.[29] On the other hand, the award of exemplary damages, which is granted in the case of incestuous rape because of the presence of aggravating circumstances, should be reduced to P25,000.00 in line with current rulings.[30] Moreover, these items of damages should be awarded in favor of the complainant for each count of rape.

WHEREFORE, the decision of the Regional Trial Court, Branch 40, Palayan City, finding accused-appellant guilty of three counts of rape, is AFFIRMED with the MODIFICATION that accused-appellant is ordered to pay complainant Maricel Santos, for each count of rape, the amount of P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

In accordance with Section 25 of R.A. No. 7659, amending Art. 83 of the Revised Penal Code, upon the finality of this decision, let the records of this case be forthwith forwarded to the President of the Philippines for the possible exercise of the pardoning power.

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SO ORDERED.

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

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[1] Penned by Judge Erlinda Pestaño Buted.

[2] Crim. Case No. 0673-P. In Crim. Case No. 0674-P, the crime was allegedly committed on December 18, 1995 and in Crim. Case No. 0675-P, sometime in September 1995.

[3] TSN (Maricel Santos) April 7, 1997, p. 5; TSN (Carmen Gallema), April 23, 1996, pp. 6-7.

[4] TSN (Carmen Gallema), Sept. 21, 1998, p. 3.

[5] TSN (Maricel Santos), April 7, 1997, pp. 7-14; TSN (Maricel Santos), July 14, 1997, p. 5.

[6] TSN (Carmen Gallema), April 23, 1996, pp. 7-10.

[7] TSN (SPO2 Bienvenido Carse), April 7, 1997, p. 3; TSN (SPO2 Bienvenido Carse), July 1, 1997, pp. 2-3; Exh. E (Photocopy of Police Blotter); Exh. F (Investigation Report).

[8] Exh. "B" (Medical Certificate).

[9] TSN (Dr. Felimon Veneracion), February 10, 1997, pp. 4, 7, 9-11.

[10] TSN (Pablo Santos), August 3, 1998, pp. 6-10.

[11] Id., pp. 4-5.

[12] Rollo, p. 39.

[13] People vs. Bohol, G.R. Nos. 141712-13, August 22, 2001.

[14] People vs. Segui, G.R. No. 131532-34, November 28, 2000; People vs. Sancha, 324 SCRA 646 (2000).

[15] People vs. Melivo, 253 SCRA 347 (1996).

[16] E.g., People vs. Sandico, 307 SCRA 204 (1999).

[17] People vs. Segui, G.R. Nos. 131532-34, November 28, 2000.

[18] People vs. Bali-balita, G.R. No. 134266, September 15, 2000.

[19] People vs. Patriarca, 319 SCRA 87 (1999).

[20] TSN (Pablo Santos), August 31, 1998, p. 3.

[21] TSN (Cross-examination of Carmen Gallema), April 23, 1996, p. 22.

[22] E.g., People vs. Obejas, 229 SCRA 549 (1994).

[23] People vs. dela Cruz, G.R. Nos. 131167-68, August 23, 2000.

[24] Decision, p. 8; Rollo, p. 37.

[25] People vs. Elpedes, G.R. Nos. 137106-07, January 31, 2001; People vs. Segui, G.R. Nos. 131532-34, Nov. 28, 2000.

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[26] Exh. "A."

[27] 267 SCRA 682 (1997).

[28] People vs. Brondial, G.R. No. 135517, October 18, 2000.

[29] People vs. Segui, G.R. Nos. 131532-34, November 28, 2000.

[30] People vs. Catubig, G.R. No. 137842, August 23, 2001; People vs. Rivera, G.R. No. 139180, July 31, 2001.

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