

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO QUARRE Y ROA, ACCUSED-APPELLANT.*G.R. Nos. 140729-30. February 15, 2002*

Ponente: BELLOSILLO, J.

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ERNESTO QUARRE Y ROA was charged with raping his daughters Marilou, 15, and Laarni, 12. He was found guilty as charged and sentenced to death.[1] His case is now before us on automatic review.

Marilou and Laarni, third year and first year high school students respectively, are the legitimate daughters of the spouses Ernesto Quarre and Zosima Senagan. Together with two (2) other siblings, they resided with their parents in a two (2)-bedroom house at Block 5, Lot 6, Console 12, Elvinda Village, San Pedro, Laguna.

On 2 September 1998 at about 11:30 o'clock in the evening, when Marilou was about to sleep in the bedroom she shared with her siblings, she heard someone kicking the door of their room. She was already in bed with her ten (10)-year old brother Nicky Jay, while Laarni and their friend Michelle were sleeping on a mat on the floor. The noise prompted Marilou to get up, and upon opening the locked door her father Ernesto immediately collapsed to the floor in front of her inside the room. He was drunk. Marilou's mother Zosima and twenty (20)-year old brother Nelson immediately went in and helped Ernesto to his feet while Marilou returned to her bed to sleep.

Zosima and Nelson asked Ernesto to transfer to his room as the children had to go to school the following morning. Ernesto however remained in the room and rapped jokes at them to which they all laughed. Because of Ernesto's obstinate refusal to leave despite her proddings, Zosima told the children to move to the other room instead. When the children stood up to leave, Ernesto became infuriated. He yelled at them and, with a knife he drew from a cabinet, threatened to splatter the house with blood if they insisted on transferring to the other room.[2]

Nelson tried to convince his father to leave by reminding him that the children had to go to school the next day but Ernesto warned him not to meddle and then swung his knife in front of him. Nelson had no choice but to leave the room to seek some assistance outside.

Ernesto then turned to Michelle, the friend of his daughters. He poked a knife at her, saying, "Ikaw, malandi ka, bakit nandito ka?"[3] and abruptly kicked her out of the room. Anxious and unable to restrain her husband, Zosima left the house taking with her her ten (10)-year old son Nicky to look for a barangay official to help them.[4]

Ernesto also left the bedroom. After keeping the knife under the sofa in the living room, he went out of the house and locked the gate. He returned to the bedroom later where Marilou and Laarni were already sleeping. He bolted the door from the inside, turned off the light, then shoved Laarni off the bed sending her to the floor. He asked Marilou to undress, then boxed her on the thigh when she refused. She asked him why he was doing that to her and he bluntly answered that he was seeking vengeance as she and Laarni filed a complaint for rape against him in

the past. Scared and hurt, Marilou removed her shorts and underwear leaving only her t-shirt on. Ernesto then asked her to spread her legs. Again, she refused but was forced to comply when he boxed her again on the thigh which resulted in a hematoma.[5] She cried, but her father threatened to kill her if she shouted.

Marilou was lying on the bed with her legs already spread apart when the accused, clad only in his briefs and having already removed practically all his clothes, placed himself on top of her.[6] He kissed her on the different parts of her body, including her "lower part,"[7] but in the process he fell on the floor. He climbed back to bed and placed himself on top of her again. After taking off his briefs he tried to insert his private organ into hers but his attempts were frustrated by her determined resistance. He held his private organ while trying to feel hers. Marilou felt his private organ. She also felt pain when he pressed his private part against hers.[8] He also tried to force his finger into her private part but she staved off his every attempt.

Marilou cried out to her father, "Tama na, Papa." [9] Unable to help her sister, Laarni just cried in a corner of the room.[10] But Laarni was not to be spared of her father's lechery. Eventually, Ernesto got mad at Marilou and told her it was better for him to go to Laarni. He left the bed and went down the floor where he sexually assaulted Laarni. He removed her shorts and underwear and went on top of her. Like Marilou, Laarni felt her father press his organ against hers.[11]

Unsatiated, he went back to bed for the third time and placed himself on top of Marilou, pressing his organ once again against hers. Marilou tried to ward off his father's advances so that Ernesto was not able to penetrate her private part. Again Laarni heard her sister cry: "Tama na, Papa." But Ernesto continued in sexually abusing Marilou, pursuing his lustful desires for a long time, but not for an hour.[12]

Soon after he stopped abusing his daughters, the accused lay on the bed and Marilou instructed Laarni to go to the kitchen to boil water which she would use to sponge her father. Laarni did as she was told but when she returned to the living room, she was surprised to see people gathered outside their house. She asked Michelle, who was in the other bedroom, to inform Marilou. Michelle knocked at the door of Marilou's room.

Upon hearing the rapping on the door, Ernesto instructed Marilou to open it and say that he was already asleep. Marilou put on her shorts and went outside the house where she saw several policemen who asked her to open the gate. She failed to locate the key so a barangay tanod had to destroy the lock. The policemen as well as the barangay officials entered their house and handcuffed the accused. Ernesto was brought to the police station in San Pedro, Laguna.

The victims testified to have experienced their father's molestations countless times before. Marilou recalled that she was molested more than twenty (20) times since she was barely between ten (10) and twelve (12) years old. For Laarni, the sexual assaults started when she was eleven (11) years old. In fact, whenever Ernesto was drunk, he would herd both girls into a room and abuse them. When their mother learned of it, Zosima reported it to the police. A prior complaint for rape was filed against the accused which resulted in his incarceration for more than a year.[13] But Ernesto promised not to touch his daughters again and his relatives even interceded to help settle the case. Apparently, the complainants thought of giving him a second chance and forgave him. Consequently they did not attend the hearings, so the case was dismissed.

But Ernesto failed to keep his promise. Thus, on 4 February 1999, two (2) separate Informations were filed charging Ernesto Quarre with the crime of rape defined and penalized under RA 7610 in relation to RA 8353 otherwise known as the "Anti-Rape Law of 1997." These were docketed under Crim. Cases Nos. 1033 and 1037 and tried jointly.

The accused was the sole witness in his defense. He denied the accusations and declared that early that evening he

was out drinking wine with his friends. He went home at 10:00 o'clock after consuming two (2) 250 ml. bottles of Tanduay ESQ and upon arriving home immediately went to sleep. He was startled out of sleep at around 10:30 o'clock that evening by barangay officials and policemen who dragged him out of the house. He resisted but they handcuffed and mauled him. He was brought to the police station in San Pedro, Laguna, where he was told that he would be brought to the health center for medical examination. He learned about the charges against him four (4) days later.

On 21 September 1999 the trial court rendered its Decision finding the accused guilty beyond reasonable doubt in both cases.[14] He was sentenced to death and to pay each victim a civil indemnity of P100,000.00 and P50,000.00 in moral damages.

In the present appeal, the accused denies sexually molesting his daughters Marilou and Laarni on 2 September 1998 and further claims that he was then too drunk to abuse them. Hence the court a quo, he concludes, erred in finding him guilty of the crimes charged beyond reasonable doubt.

We find no reason to disbelieve the complainants, and so we affirm the lower court's finding of sexual abuse. It was established with certitude that the accused sexually assaulted his daughters. The perpetration of the crime and its authorship were proved by the candid and unwavering testimonies of the complaining witnesses themselves who had the misfortune of sharing the same fate in the hands of their own father and in each other's presence. The sincerity of Marilou who was examined at a greater length than Laarni was made more evident when she cried on the witness stand in obvious distress over what her father had done to her and her sister.[15]

This Court has consistently manifested a tendency to give great weight and credit to testimonies of victims of sexual abuse. Thus, when a woman says that she has been sexually molested and recounts the details thereof, she gives all that is necessary to prove that the crime was committed.[16] In fact we give heavier weight to such testimonies coming from young girls between the ages of twelve (12) and sixteen (16) considering not only their innate propensity for truth but also the shame and embarrassment of court trial to which they would be exposed if the matter about which they would testify were not true.[17] Furthermore, the filing of a case of incestuous rape is of grave concern, for in the nature of things, a daughter would not hurl serious and odious accusations against her own father nor fabricate a story which would drag her and her family to a lifetime of dishonor and potentially bring about the death of her own father.[18]

We note that the the appeal itself poses no serious challenge to the credibility of Marilou and Laarni. The accused was not able to hint at any ill motive on their part nor offer a defense other than a pathetic disavowal of the assault on his daughters claiming that he was then at the time of its perpetration in a drunken slumber. The accused cannot rely on denial to exculpate himself. It is not only self-serving[19] but is also an intrinsically weak defense which cannot prevail over the positive identification of him by his own daughters.[20]

In an effort to escape the capital punishment, the accused also anchors this appeal on the alleged insufficiency of evidence to show the slightest penile penetration of the labias of the private organs of the victims Marilou and Laarni by his penis to support the conviction for two (2) counts of consummated rape. With the absence of physical evidence to corroborate the claim of the victims, the accused urges this Court to rule that there was no carnal knowledge between him and his daughters which he contends makes him liable only for attempted rape and its corresponding less severe penalties.[21]

We find merit in the appeal. While it is well-settled that complete penetration of the penis into the vagina is not necessary to convict for consummated rape since the slightest penetration of one into the other will suffice, in *People v. Campuhan*[22] the Court clarified the legal concept involved in the term "slightest penetration" where we set forth the criterion that there must be sufficient and convincing proof of the penis indeed touching at the

very least the labias of the female organ. Campuhan also enunciated the doctrine that mere epidermal contact between the penis and the external layer of the victim's vagina (the stroking or grazing of the male organ upon the female organ or the mons pubis) categorizes the crime as attempted rape or acts of lasciviousness.

In the case at bar, we find no evidence beyond reasonable doubt that the accused consummated the slightest penetration of Marilou's vagina. Consisting of only the bare and true words of the victim, there being no medico-legal examination report that would have cleansed her testimony of ambiguous references to the precise character of the sexual act, the evidence looms with the moral uncertainty that the penis of the accused ever touched the labia of the pudendum. A perusal of the transcript of the testimony of Marilou disclosed repeated denials of penile insertion. When the court questioned her on direct examination, she replied with all candor and consistency -

COURT: Let's make this clear.

Q:

The only thing that your father did to you while he was on top of you was to kiss you on the different parts of your body, is that the only thing that he did to you?

A:

There was, maam, I felt that he was trying to insert his private part into my private part but I resisted that's why he got angry, maam.

Q:

Was he successful in inserting his private part into yours?

A:

He tried to insert his private part into my private part and I felt pain, but it did not enter into my private part, it merely made "dikit," maam.[23]

Q:

And despite that length of time you are telling the Court that your father was not able to penetrate you?

A:

No, maam, he was also trying to insert his finger to my private part. I felt pain and I resisted and I was able to ward off his attempt, maam.

Q:

So he was not able to insert his finger into your private part, is that what you mean?

A:

He was not able to insert his finger into my private part, maam, but I felt pain because he was forcing his finger into mine.

Q:

Does the court understand that he was not able to insert his private part into yours?

A:

No, maam, only "dikit" x x x x[24]

Her answers were no less categorical on cross-examination:

ATTY. FUENTES: And your resistance, of course, Miss Witness, was forceful?

A:

Yes, sir x x x x

Q:

And you felt that you succeeded in stopping him of molesting you?

A:

Yes, sir.

Q:

And again he was trying to insert his private part into yours?

A:

Yes, maam.

Q:

Was he successful in inserting his private organ into yours the second time?

A:

No, maam x x x x

Q:

And after that your father for the third time went to your bed and placed himself on top of you, is that correct?

A:

Yes, maam.

Q:

And he again pressed and made "diin" his private part into yours?

A:

Yes, maam.

Q:

Was he able to enter or penetrate his private part into yours?

A:

No, maam.[25]

The Office of the Solicitor General argues that although the complainant Marilou admitted that her father was not able to insert his private part, she nonetheless expressed pain when the accused pressed his penis into her vagina. The People's counsel would theorize that coupled with the fact that the victim's legs were spread apart and the accused was on top of her and pressing his organ into hers for less than an hour, the statement of pain already proves that the accused's penis touched the labia of the pudendum of Marilou.

We do not agree. The argument of the Solicitor General is speculative and is devoid of any merit when considered with the admissions of the victim herself. There persist serious doubts as to the veracity of such inference for which the death penalty cannot be justly imposed. Needless to stress, a verdict of guilt must be based on proof beyond reasonable doubt.[26]

Clearly, it is carnal knowledge, not pain, that is the element to consummate rape. While pain may be deduced from the sexual act whatever worth this inference may have, we certainly cannot convict for rape by presuming carnal knowledge out of pain. It is truly a dangerous proposition to equate the victim's testimony of pain with proof of carnal knowledge. The peril lies in the absolute facility of manufacturing testimonies asserting pain. Pain is subjective and so easy to feign. Our jurisprudence dictates positive proof of even the slightest penetration, more accurately, the touching of the labias by the penis, before rape could be deemed consummated. The distinction is critical no matter how despicable the deeds may be for upon it depends our authority in proper cases to take one's life.

On the other hand, the lengthy quotation from the testimony of the victim (which is the only evidence of the sexual act) shows her categorical denial of the insertion of her father's penis into her vagina. She offers the consistent answers of "dikit" (which means to touch by nearing, or nudge), and "diin" (which means to press) with full and intelligent disclosure and discernment appropriate for a third year high school student to stress the point that there was no entry of the penis into her private part. Her testimony does not evoke the image of contact with the labia of the pudendum that consummates the sexual act into rape and, although no less despicable, all she certainly means is that the penis of the offender merely brushed the external layer of her vagina as a result of the stiff resistance she put up against the bestiality of her father who was then drunk. Even if rejected as an outright denial of carnal knowledge, the testimony is at the very least subject to different interpretations, and barring any speculative and unfounded premises, it will not lead to the conclusion that the accused truly succeeded in having carnal knowledge of her. As serious doubt enshrouds her testimony that rape was consummated, the constitutional guarantee in favor of a lower degree of culpability for the accused must prevail.

We are aware that the trial court may have fed and led Marilou into affirming that her father's penis "touched her vagina." The semantic impropriety of this verb construction as well as the low evidentiary value of the leading question used to obtain it is obvious. But what completely drains this single isolated statement of its force and vigor is the context of her other statements elicited through proper, and more importantly, non-leading questions.

As exhibited above, the overall testimony of the victim leads to only one conclusion which denies the insertion of her father's penis into her vagina despite the relentless efforts of the prosecution and the court to establish the actual consummation of the offense. Given Marilou's maturity at adolescence to understand the sexual act, as well as her corresponding vocabulary more or less developed as her sex and worldly sophistication, we will not set aside her steadfast observations negating the slightest penetration of her vagina.

This case is not the first time that we encounter the words "dikit" or "diin" in describing the degree of vaginal contact and in rejecting them as probative of the alleged contact between the penis and the labia of the pudendum. In *People v. Arce*[27] we said that the victim's testimony "[i]dinidikit niya ang titi niya," referring to her assailant, is not enough to establish consummated rape. As in the case at bar, what prevented the accused in *Arce* from making the slightest penetration was the resistance of the victim against the advances of the criminal -

A careful reading of the testimony of Gemmalyn fails to convince us that the rape was consummated. Gemmalyn did not declare positively that there was the slightest penetration necessary to consummate rape. On the contrary, she categorically stated that accused-appellant was not able to insert his penis into her private part because she was moving away her hips x x x x

Furthermore, in *People v. Dimapilis*[28] this Court refused to convict the accused for consummated rape on the basis of the victim's testimony that she felt the accused's penis pressed (in the instant case "diniin") against her vagina as he tried to insert it into her private organ. *People v. Tolentino*[29] also ruled as an inadequate basis to conclude the consummation of the forced sexual act the testimony of the victim picturing the penis as merely "binubundul-bundol" (which is synonymous with "dikit" or "diin" in signifying only an epidermal contact) vis-a-vis her vagina -

There was nothing from RACHELLE's testimony that proved that TOLENTINO's penis reached the labia of the pudendum of RACHELLE's vagina. As translated, she only said: "He placed his sex organ to my sex organ, sir." This was the translation of the word "binubundul-bundol." And when asked to explain what she meant by it, she answered: "He was trying to force his sex organ into mine, sir." The prosecution did not ask her the appropriate questions to get some more important details that would demonstrate beyond any shadow of doubt that TOLENTINO's penis reached the labia of the pudendum or the lips of RACHELLE's vagina. It should have, for instance, asked whether TOLENTINO's penis was firm and erect or whether RACHELLE's legs were spread apart to bring us to the logical conclusion that, indeed, TOLENTINO's penis was not flabby and had the capacity to directly hit the labia of the pudendum or the lips of RACHELLE's vagina. There is paucity of evidence that the slightest penetration ever took place. Consequently, TOLENTINO can only be liable for attempted rape.

It is important to stress that our decisions finding a case for rape even if the attacker's penis merely touched the external portions of the female genitalia were made in the context of the existence of an erectile penis capable of full penetration. The physiologic impossibility of penetration absent an erection, complete or otherwise, cannot be gainsaid. If because of the victim's vigilant attempts at warding off her attacker's sexual advances an accused is unable to completely penetrate his victim's vaginal orifice, a charge for rape under existing jurisprudence can still be sustained. If the penis were erect, full penetration would have been accomplished were it not for the victim's vigilance or the occurrence of other circumstances which might have frustrated the accomplishment of complete penetration. That is not however the case before us.

The prosecution has failed to present evidence that the penis of the accused was erect when he sexually assaulted Marilou. It bears emphasizing that when he forced himself on his daughters he was extremely inebriated, which could have balked an erection. Neither could we infer an erect penis from the pain which Marilou felt when she was pinned to the bed by her father. The victim's pain cannot be exclusively attributed to the attempted sexual intercourse since she too was "fingered" by the accused although it was not known where. In light of the multiple

attempts to intrude into her private part, we cannot be certain as to which act truly caused the pain, the bony finger, the penis, or mere pressure from any source. At any rate, we have held in *People v. Francisco*[30] that the testimony of the victim to the effect that the accused repeatedly poked her vagina and that she felt pain as a consequence thereof does not automatically warrant the conclusion that consummated rape was indeed committed - more circumstances had to be presented.

The element of carnal knowledge does not establish itself by presumptions but always the burden lies with the State to prove this act positively and actually to warrant the capital punishment. The prosecution has the onus probandi of establishing the precise degree of culpability of the accused. It must demonstrate in sufficient detail the manner by which the crime was perpetrated. In light of the categorical assertions of the victim that there was no penetration of her vagina and the concomitant ambivalence of these assertions as to the exact degree of culpability of the accused, we hold that the prosecution failed to discharge its burden of proving carnal knowledge by the accused of his daughter Marilou.

Finally, even the trial court after witnessing first hand the odious evidence against the accused could only rely upon utter speculation and idle belief that "both minors are just plain coy"[31] to tell frankly that there was truly the slightest penetration. The lower court's observation is both revealing and troubling as it acknowledges the unfortunate and severe inadequacies of the testimonies of the complainants. Cognizant of the insufficiency of the prosecution evidence, this Court understandably refuses, and rightly so, to take the same leap of faith as the trial court did. The despicable character of the accused cannot lead us to supply from out of the blue and unfounded inferences the missing link towards his conviction for a capital offense. There must be convincing evidence of culpability, proof that only the prosecution could have established. This axiom basic to our culture of law has the utmost consequence in cases where there is a possibility of the forfeiture of life.

Considering that there was neither testimonial nor physical evidence to provide adequate basis for the finding of consummated rape in *Crim. Case No. 1033*, the accused should only be properly punished for attempted rape.

With regard to Laarni, Marilou's younger sister, we agree with the Office of the Solicitor General that there is similarly want of evidence to maintain that the slightest penetration ever took place. Other than Laarni's declaration that the accused pressed his penis into her private organ without any indication of whether it was able to reach the labia of her pudendum, and following our ruling in the companion rape case of her sister, the accused can only be held liable for attempted rape.

WHEREFORE, the Decision of the court a quo in *Crim. Case No. 1033-SPL* finding the accused ERNESTO QUARRE Y ROA guilty of qualified rape committed against Marilou Quarre y Senagan and sentencing him to death and to pay her P100,000.00 as civil indemnity and P50,000.00 as moral damages, as well as the Decision of the same court a quo in *Crim. Case No. 1037-SPL* finding the same accused guilty of qualified rape committed against Laarni Quarre and sentencing him likewise to death and to pay her P100,000.00 as civil indemnity and P50,000.00 as moral damages is MODIFIED. In *Crim. Cases Nos. 1033-SPL* and *1037-SPL* the accused is instead found guilty of attempted rape and sentenced only to two (2) indeterminate prison terms of eight (8) years, two (2) months and twenty (20) days of prision mayor medium as minimum to fourteen (14) years, eight (8) months and ten (10) days of reclusion temporal medium as maximum, to be served successively. Correspondingly, the civil indemnity of P100,000.00 and moral damages of P50,000.00 awarded to each of the victims in *Crim. Cases Nos. 1033-SPL* and *1037-SPL* are reduced to P50,000.00 and P25,000.00, respectively, for each of the victims Marilou S. Quarre (*Crim. Case No. 1033-SPL*) and Laarni S. Quarre (*Crim. Case No. 1037-SPL*) according to established jurisprudence. Costs de oficio.

SO ORDERED.

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

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- [1] Decision penned by Judge Stella Cabuco Andres, RTC-Br. 31, San Pedro, Laguna; Rollo, p. 20.
- [2] The exact words in Tagalog were, "Sige, lumabas kayo, kundi babaha ng dugo dito sa bahay, " TSN, 16 June 1999, p. 7.
- [3] TSN, 4 April 1999, p. 14.
- [4] TSN, 16 June 1999, p. 8.
- [5] TSN, 5 April 1999, p. 17; TSN, 16 April 1999, p. 10.
- [6] TSN, 5 April 1999, pp. 18-19.
- [7] TSN, 4 April 1999, p. 18.
- [8] TSN, 5 April 1999, p. 21; TSN, 16 April 1999, p. 3.
- [9] TSN, 12 May 1999, p. 7.
- [10] Ibid.
- [11] Ibid.
- [12] "Matagal-tagal din po, pero hindi aabot ng isang oras." TSN, 5 April 1999, p. 20.
- [13] Id., p. 23.
- [14] Decision , p. 6; Rollo, p. 25.
- [15] TSN, 5 April 1999, p. 24; TSN, 16 April 1999, p. 11.
- [16] People v. Gabayron, G.R. No. 102018, 21 August 1997, 278 SCRA 78; People v. Silvano, G.R. No. 127356, 29 June 1999, 309 SCRA 362; People v. Loriega, G.R. Nos. 116009-10, 29 February 2000, 326 SCRA 675; People v. Cablingas, G.R. No. 79679, 28 March 2000, 329 SCRA 21.
- [17] People v. Adijio, G.R. Nos. 136003-04, 17 October 2000, 343 SCRA 316, citing People v. Clopino, G.R. No. 117322, 21 May 1998, 290 SCRA 432.
- [18] People v. Tundag, G.R. Nos. 135695-96, 12 October 2000, 342 SCRA 704.
- [19] People v. Silvano, see Note 16.
- [20] People v. Gabayron, see Note 16; People v. Santos, G.R. No. 127846, 18 October 2000, 343 SCRA 503.
- [21] Appellant's Brief, pp. 25-26; Rollo, pp. 71-72.
- [22] People v. Campuhan, G.R. No. 129433, 30 March 2000, 329 SCRA 270.
- [23] TSN, 5 April 1999, p. 19.
- [24] Id., pp. 20-21.
- [25] TSN, 16 April 1999, pp. 8-9.

[26] People v. Tayag, G.R. No. 132053, 31 March 2000, 329 SCRA 491.

[27] G.R. Nos. 139064-66, 6 September 2001.

[28] G.R. No. 129573, 18 October 2000, 343 SCRA 556.

[29] G.R. No. 130514, 17 June 1999, 308 SCRA 485.

[30] G.R. Nos. 135201-02, 15 March 2001.

[31] Decision, p. 4; Rollo, p. 23.

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