

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO D. PATANAYAN JR., ACCUSED-APPELLANT.

G.R. Nos. 141189-141202. July 23, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Fourteen (14) separate informations for rape were filed against accused-appellant Domingo D. Patanayan Jr. Each information reads as follows:

Criminal Case No. IR-4769

That sometime in the month of December 1997 in their house in San Vicente Sur, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the complainant, did, then and there, willfully, unlawfully and feloniously, with abuse of confidence, by means of threats and intimidation, and taking advantage of complainant's youth and weakness, have carnal knowledge of the said CHERRY GRACE PATANAYAN Y MOLINA, 18 years of age, for the 12th time against her will and consent, to the damage and prejudice of the said Cherry Grace Patanayan y Molina in such amount as may be proven in court.

ACT CONTRARY TO LAW.[1]

Criminal Case No. IR-4770

That sometime in the month of October 1997 in their house in San Vicente Sur, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the complainant, did, then and there, willfully, unlawfully and feloniously, with abuse of confidence, by means of threats and intimidation, and taking advantage of complainant's youth and weakness, have carnal knowledge of the said CHERRY GRACE PATANAYAN Y MOLINA, 17 years of age, for the 11th time against her will and consent, to the damage and prejudice of the said Cherry Grace Patanayan y Molina in such amount as may be proven in court.

ACT CONTRARY TO LAW.[2]

Criminal Case No. IR-4771

That sometime in the month of July 1997 in their house in San Vicente Sur, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the complainant, did, then and there, willfully, unlawfully and feloniously, with abuse of confidence, by means of threats and intimidation, and taking advantage of complainant's youth and weakness, have carnal knowledge of the said CHERRY GRACE PATANAYAN Y MOLINA, 17 years of age, for the 10th time against her will and consent, to the damage and prejudice of the said Cherry Grace Patanayan y Molina in such amount as may be proven in court.

ACT CONTRARY TO LAW.[3]

Criminal Case No. IR-4772

That sometime in the month of May 1997 (middle part) in their house in San Vicente Sur, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the complainant, did, then and there, willfully, unlawfully and feloniously, with abuse of confidence, by means of threats and intimidation, and taking advantage of complainant's youth and weakness, have carnal knowledge of the said CHERRY GRACE PATANAYAN Y MOLINA, 17 years of age, for the 9th time against her will and consent, to the damage and prejudice of the said Cherry Grace Patanayan y Molina in such amount as may be proven in court.

ACT CONTRARY TO LAW.[4]

Criminal Case No. IR-4773

That sometime in the month of February 1997 (after Valentine's Day and before Barangay Fiesta, February 20 1997) in their house in San Vicente Sur, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the complainant, did, then and there, willfully, unlawfully and feloniously, with abuse of confidence, by means of threats and intimidation, and taking advantage of complainant's youth and weakness, have carnal knowledge of the said CHERRY GRACE PATANAYAN Y MOLINA, 17 years of age, for the 8th time against her will and consent, to the damage and prejudice of the said Cherry Grace Patanayan y Molina in such amount as may be proven in court.

ACT CONTRARY TO LAW.[5]

Criminal Case No. IR-4774

That sometime in the month of December 1996 in their house in San Vicente Sur, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the complainant, did, then and there, willfully, unlawfully and feloniously, with abuse of confidence, by means of threats and intimidation, and taking advantage of complainant's youth and weakness, have carnal knowledge of the said CHERRY GRACE PATANAYAN Y MOLINA, 17 years of age, for the 7th time against her will and consent, to the damage and prejudice of the said Cherry Grace Patanayan y Molina in such amount as may be proven in court.

ACT CONTRARY TO LAW.[7]

Criminal Case No. IR-4775

That sometime in the month of November 1996 in their house in San Vicente Sur, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the complainant, did, then and there, willfully, unlawfully and feloniously, with abuse of confidence, by means of threats and intimidation, and taking advantage of complainant's youth and weakness, have carnal knowledge of the said CHERRY GRACE PATANAYAN Y MOLINA, 17 years of age, for the 6th time against her will and consent, to the damage and prejudice of the said Cherry Grace Patanayan y Molina in such amount as may be proven in court.

ACT CONTRARY TO LAW.[7]

Criminal Case No. IR-4776

That sometime in the month of April 1996 (Summer) in their house in San Vicente Sur, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the complainant, did, then and there, willfully, unlawfully and feloniously, with abuse of confidence, by means of threats and intimidation, and taking advantage of complainant's youth and weakness, have carnal knowledge of the said CHERRY GRACE PATANAYAN Y MOLINA, 16 years of age, for the 5th time against her will

and consent, to the damage and prejudice of the said Cherry Grace Patanayan y Molina in such amount as may be proven in court.

ACT CONTRARY TO LAW.[8]

Criminal Case No. IR-4777

That sometime in the month of January 1996 (a week after New Year), in their house in San Vicente Sur, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the complainant, did, then and there, willfully, unlawfully and feloniously, with abuse of confidence, by means of threats and intimidation, and taking advantage of complainant's youth and weakness, have carnal knowledge of the said CHERRY GRACE PATANAYAN Y MOLINA, 16 years of age, for the 4th time against her will and consent, to the damage and prejudice of the said Cherry Grace Patanayan y Molina in such amount as may be proven in court.

ACT CONTRARY TO LAW.[9]

Criminal Case No. IR-4778

That sometime in the last week of November 1995 in their house in San Vicente Sur, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the complainant, did, then and there, willfully, unlawfully and feloniously, with abuse of confidence, by means of threats and intimidation, and taking advantage of complainant's youth and weakness, have carnal knowledge of the said Cherry Grace Patanayan y Molina, 16 years of age, for the 3rd time against her will and consent, to the damage and prejudice of the said Cherry Grace Patanayan y Molina in such amount as may be proven in court.

ACT CONTRARY TO LAW.[10]

Criminal Case No. IR-4779

That sometime in the month of October 1995 in their house in San Vicente Sur, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the complainant, did, then and there, willfully, unlawfully and feloniously, with abuse of confidence, by means of threats and intimidation, and taking advantage of complainant's youth and weakness, have carnal knowledge of the said CHERRY GRACE PATANAYAN Y MOLINA, 15 years of age, for the second time against her will and consent, to the damage and prejudice of the said Cherry Grace Patanayan y Molina in such amount as may be proven in court.

ACT CONTRARY TO LAW.[11]

Criminal Case No. IR-4780

That sometime in the month of September 1995 in their house in San Vicente Sur, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the complainant, did, then and there, willfully, unlawfully and feloniously, with abuse of confidence, by means of threats and intimidation, and taking advantage of complainant's youth and weakness, have carnal knowledge of the said CHERRY GRACE PATANAYAN Y MOLINA, 15 years of age, for the first time against her will and consent, to the damage and prejudice of the said Cherry Grace Patanayan y Molina in such amount as may be proven in court.

ACT CONTRARY TO LAW.[12]

Criminal Case No. IR-4781

That sometime in the month of February 1998 in their house in San Vicente Sur, Iriga City, Philippines and

within the jurisdiction of this Honorable Court, the above-named accused, being the father of the complainant, did, then and there, willfully, unlawfully and feloniously, with abuse of confidence, by means of threats and intimidation, and taking advantage of complainant's youth and weakness, have carnal knowledge of the said CHERRY GRACE PATANAYAN Y MOLINA, 18 years of age, for the 13th time against her will and consent, to the damage and prejudice of the said Cherry Grace Patanayan y Molina in such amount as may be proven in court.

ACT CONTRARY TO LAW.[13]

Criminal Case No. IR-4782

That sometime in the month of April 1998 (before Good Friday) in their house in San Vicente Sur, Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the complainant, did, then and there, willfully, unlawfully and feloniously, with abuse of confidence, by means of threats and intimidation, and taking advantage of complainant's youth and weakness, have carnal knowledge of the said CHERRY GRACE PATANAYAN Y MOLINA, 18 years of age, for the 14th time against her will and consent, to the damage and prejudice of the said Cherry Grace Patanayan y Molina in such amount as may be proven in court.

ACT CONTRARY TO LAW.[14]

The cases were raffled to, and consolidated for trial before, Branch 37 of the Regional Trial Court in Iriga City.

On October 16, 1998, the accused-appellant was arraigned in all cases; and in all of them, he pleaded not guilty.[15]

Trial ensued.

On November 18, 1998, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, this Court finds the evidence of the prosecution to have established the guilt of accused Domingo D. Patanayan, Jr. of the crime charged in the 14 informations, beyond reasonable doubt, as principal thereof, and although the nature and the number of the penalty that may be imposed is physically impossible of execution as a person has only one life but same is legally proper in imposition, the Court hereby sentences accused to suffer the supreme penalty of death in each case, or 14 death penalties in the 14 cases, to indemnify Cherry Grace P75,000.00 in each case as actual damages (People vs. Victor, G.R. No. 127903, July 9, 1998) which is, however, awarded only in compliance with the law.

SO ORDERED.[16]

The relevant antecedents are as follows:

At around ten o'clock in the morning sometime in September, 1995, private complainant Cherry Grace M. Patanayan was busy sweeping their yard at San Vicente Sur, Iriga City. At that time, her mother was preparing firewood for cooking, her younger siblings were playing, and the accused-appellant was inside their house.[17] After a while, the accused-appellant requested his wife to go to the poblacion to buy some goods.[18] As soon as his wife departed, the accused-appellant instructed his eldest son to buy some cigarettes and then, directed his younger children to play at their grandmother's house. Moments later, he summoned Cherry Grace inside a room in the house.[19] As soon as Cherry Grace entered the room, the accused-appellant, who was then sitting on the bed, told her to yield (pagbigyan) to his request. Cherry Grace could not understand what he meant.[20] Then, to her horror, the accused-appellant forcefully dragged Cherry Grace and pinned her against the wall. He whacked her head against the wall, then, made her stand on a seven-inch bench or bangkito.[21] He gripped her hands with one hand, then, lowered her garterized panty and shorts to her knees with his other hand.[221] The

accused-appellant then muttered: Para ngaya ko umu-usad (I will just take one).[23] Cherry Grace tried to escape his father's tight grip to no avail.[24] The more she tried to wrestle out of his grip, the more he tightened his hold on her and pinned her further to the wall. This frightened Cherry Grace.[25] Amidst her struggle, she felt the accused-appellant's erect penis enter her vagina. She was in tremendous pain.[26] Cherry Grace could only stifle her cry because the accused-appellant covered her mouth.[27] After sexually relieving himself, the accused-appellant loosened his hold on her, then, bowed down to wipe something on the floor.[28] Cherry Grace pulled up her panty and shorts and ran downstairs, crying as she went under a coconut tree.[29] The accused-appellant again summoned her and warned her not to tell anyone, even her mother, of the incident, if she wanted herself and her family members to live longer.[30] He then ordered her to finish sweeping the yard.[31]

When her mother came home, she noticed her disheveled hair and when she asked her about it, Cherry Grace didn't say anything. But Cherry Grace's nightmarish ordeal has just begun.

For, around ten o'clock in the morning sometime in October, 1995, the accused-appellant again requested his wife to go to the poblacion and then, allowed his younger children to play at their cousin's house.[32] Thereafter, he angrily called for Cherry Grace to come to him.[33] He made her stand on the bangkito, lowered her undergarments,[34] and inserted his penis into her vagina.[35] When Cherry Grace asked her father why he was doing this to her, he covered her mouth, banged her head on the wall and declared that what he took from her is not even enough to compensate him for his efforts in feeding her and sending her to school.[36] After he had satisfied his lust, he warned her daughter not to tell anyone about it.[37] Then, he slapped her and chided her for being of no service.[38]

Without remorse, at around nine o'clock of a Sunday morning sometime in November, 1995, the accused-appellant told Cherry Grace to stand on the same bangkito at a post in their house,[39] removed her clothing,[40] inserted his penis into her vagina,[41] and reminded her not to tell anybody what he did to her.[42] Again, Cherry Grace did not tell her mother what happened because she didn't want to hurt her mother.[43]

Similarly, at around nine o'clock in the morning sometime in January, 1996, the accused-appellant asked Cherry Grace's mother to go to the poblacion;[44] and he allowed her siblings to go to their cousin's house.[45] The accused-appellant called for Cherry Grace, told her to stand on the bangkito, and pushed her on the post.[46] Afraid that her father would hurt her again, she did not physically resist when he removed her shorts.[47] Thereafter, he inserted his penis into her vagina.[48] She let him rape her because she did not want to be beaten again.[49] He repeated his threats to kill her and her family if she disclosed the grueling incidents she suffered in his hands to anybody.[50] Thus, when her mother came home, Cherry Grace did not tell her about the incident.[51]

Unfortunately, at nine o'clock in the morning sometime in April, 1996, Cherry Grace was again left with the accused-appellant in their house because her mother and siblings went out.[52] To Cherry Grace's dismay, the accused-appellant again called her, ordered her to stand on the bangkito near the post, removed her shorts and inserted his penis into her vagina.[53] She was in pain.[54] She did not tell her mother what happened when the latter came home. She just helped her mother with the chores.[55]

Cherry Grace's debasement was repeated at nine o'clock in the morning sometime in November, 1996, when the accused-appellant again told Cherry Grace's mother to go to the poblacion,[56] and directed her siblings to go and play at their cousin's house.[57] Mercilessly, the accused-appellant boxed her, banged her head, and hit her with whatever he could get hold of, even when she was already hiding under the bed. [58] Then, he told her to stand on the bangkito, pushed her on the post, removed her shorts, and inserted his penis into her vagina.[59] She could not fight back because her body was already very painful from his beatings.[60] Although she thought of leaving their

house, she stayed because she was worried about what the accused-appellant would do to her mother and siblings.[61]

Thus, at around nine o'clock in the morning sometime in December, 1996, accused-appellant again had the opportunity to rape Cherry Grace.[62] Her mother was then at the poblacion while her siblings were at their grandmother's house.[63] The accused-appellant ordered her to stand on the bangkito near the post, removed her shorts, and inserted his penis into her vagina.[64] After he was finished, he told her he would kill people if she would tell anybody what he did to her.[65] When her mother arrived, Cherry Grace kept silent.[66]

Likewise, at around nine o'clock in the morning sometime in February, 1997, Cherry Grace's mother went to the poblacion;[67] while said siblings were at their grandmother's house.[68] The accused-appellant summoned Cherry Grace, told her to stand on the bangkito, leaned her on the post, removed her shorts, and inserted his penis into her vagina.[69] She could only let him rape her because she did not want to be beaten again.[70] Thereafter, she put on her dress and went down the house.[71]

Nothing changed when at around nine o'clock in the morning sometime in May, 1997, the accused-appellant asked Cherry Grace's mother to go to the poblacion,[72] and got angry with Cherry Grace's siblings so that they will leave the house.[73] The accused-appellant again directed Cherry Grace to stand on the bangkito, leaned her on the post, removed her shorts, and inserted his penis into her vagina.[74] Afterwards, he told her to continue with her work so that nothing will happen.[75]

Still, at around nine o'clock in the morning sometime in July, 1997, the accused-appellant told Cherry Grace's mother to go to the poblacion,[76] and got angry with Cherry Grace's siblings so that they will leave the house.[77] He called for her again; but Cherry Grace did not want to obey him anymore even if he would hurt her.[78] Nonetheless, he kicked her at her back for being stubborn, forcibly pulled her up, let her stand on a chair, leaned her on the wall, removed her shorts, and inserted his penis into her vagina.[79] Thereafter, he told her to continue with her work so that she could repay her for his efforts in feeding her.[80] Although she already wanted to tell her mother what happened when the latter came home, she still did not have the courage to do so.[81]

As before, at around nine-thirty in the morning sometime in October, 1997, Cherry Grace's mother left the house to go to the market.[82] Cherry Grace wanted to go with her but the accused-appellant did not allow it.[83] Instead, he got mad at her siblings and told them that they can play anywhere so long as they leave the house.[84] When Cherry Grace and the accused-appellant were already alone in the house, he pulled her upstairs, let her stand on the bangkito, leaned her on the post, removed her shorts, and inserted his penis into her vagina.[85] She did not tell her mother what transpired.[86] Hence, the accused-appellant would rape her again.

At around nine o'clock in the morning sometime in December, 1997, Cherry Grace's mother went to the market.[87] The accused-appellant got mad at her siblings so they would leave the house.[88] Then, he physically hurt Cherry Grace, forcibly pulled her upstairs while she was crying, let her stand on the bangkito, leaned her on the post, removed her pants, and inserted his penis into her vagina.[89] When her mother arrived, she remained silent on what happened.[90]

Undaunted, at around nine o'clock in the morning sometime in February, 1998, the accused-appellant told Cherry Grace's mother to go to the market[91] and got mad at her siblings so they would leave the house.[92] When they left, he pulled Cherry Grace upstairs, made her on the bangkito, leaned her on the post, removed her pants, and inserted his penis into her vagina.[93] When her mother arrived, Cherry Grace just continued working.[94]

For the 14th and the last time, at around nine o'clock in the morning sometime in April, 1998, the accused-appellant raped Cherry Grace. When Cherry Grace's mother was at the market,[95] and her siblings were

outside the house,[96] the accused-appellant told Cherry Grace that he would allow her to go with her mother to San Jose, but would use her again.[97] In reply, she defiantly told him that she did not care if he would not allow her to go to San Jose so long as he would not use her.[98] He angrily brought her up the house and told her that he will prevail because he was the king of the house.[99] Then, he told her to stand on the bangkito, leaned her on the post, removed her pants, and inserted his penis into her vagina.[100] When her mother arrived, Cherry Grace did not tell her anything, although she already intended to do so.[101]

It was sometime in June, 1998 that Cherry Grace finally found the courage to disclose her harrowing ordeal to her grandmother.[102] On June 22, 1998, her mother took her to the City Health Office for physical examination. Dr. Loreto G. Leonido made the following findings:

- Complete, healed laceration with rounded, non-coaptable borders and retraction of the edges of the hymen at 6 o'clock;
- Test tube with a diameter of 3/4 inch entered easily the vagina.
- Erythema of the vulva.
- No other external physical findings.[103]

The accused-appellant was brought to trial; and thereafter, he was convicted by the trial court as above stated. Hence, the automatic review of said decision.

The accused-appellant raised the following assignment of errors, viz:

I.

THE TRIAL COURT ERRED IN FINDING THE (APPELLANT) GUILTY BEYOND REASONABLE DOUBT OF FOURTEEN (14) COUNTS OF RAPE IN CRIMINAL CASE NOS. IR-4769 TO IR-4782 DESPITE THE INSUFFICIENCY OF EVIDENCE FOR THE PROSECUTION.

II.

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONIAL EVIDENCE FOR THE DEFENSE OF THE (APPELLANT).

III.

THE TRIAL COURT ERRED IN CONVICTING THE (APPELLANT) PARTICULARLY IN CRIMINAL CASE NOS. IR-4769, IR-4781 AND IR-4782 DESPITE THE FACT THAT THE ALLEGATIONS THEREIN WITH RESPECT TO THE AGE OF THE PRIVATE COMPLAINANT AT THE TIME OF THE ALLEGED COMMISSION OF THE RAPES WERE DEFECTIVE.[104]

The accused-appellant contends that Cherry Grace's testimony that he raped her should not have been believed by the trial court because it was impossible for him to have inserted his penis into Cherry Grace's vagina in a standing position. He submits that since Cherry Grace's lower garments were simply pulled down the knee level, indicating that her thighs were "tightly fixed," the alleged sexual act could not have been consummated. He takes stock of the fact that Cherry Grace testified that she never spread her legs, making it impossible for the consummation of the sexual act in a standing position.

We disagree.

In the first place, it is settled that "sexual intercourse in a standing position while perhaps uncomfortable, is not

improbable.”[105] In these cases, the accused-appellant failed to sufficiently show that he could not have raped Cherry Grace in such position. On the other hand, Cherry Grace clearly and consistently testified how the accused-appellant inserted his penis into her vagina fourteen (14) times.[106]

In the second place, the established facts and circumstances show that it was not impossible for the accused-appellant to have inserted his penis into her vagina in said position, to wit:

- The accused-appellant has been shown to be a strict and cruel man who inflicts beatings even “without any reason at all” on Cherry Grace and her siblings.[107] In fact, he admitted that he is a “strict and cruel man.”[108] Even his wife “could not do anything” because she was afraid of him.[109] In a sense, Cherry Grace was trapped in a web of cruel moral ascendancy of her father over her which deprived her the courage to fight back every time he would rape her and made it quite possible for him to rape her with impunity while in a standing position.

- The accused-appellant would initially beat Cherry Grace until he was contented every time he would rape her, i.e., he would pin her on the wall, whack her head, and whip her with a belt.[110] Hence, it is not difficult to understand why Cherry Grace would simply succumb to what he wanted to do.[111] Indeed, after being beaten up, all she could do was to obey the accused-appellant when he made her stand on the bangkito, and to just listlessly stand while he was raping her.[112] Being in pain from the beatings, she could do nothing but yield her body to be sexually violated by him. Consequently, there is no doubt that after physically and violently beating Cherry Grace, the accused-appellant could have spread her legs while she was standing, penetrated her vagina, as well as pushed and pulled his penis therein.

- The accused-appellant admitted that he was almost six (6) feet tall while Cherry Grace, at age fifteen (15), was five (5) feet and three (3) inches.[113] To bridge the gap in height, the accused-appellant made Cherry Grace stand on the bangkito which is about seven (7) to eight (8) inches.[114] With his penis at level with Cherry Grace's vagina, he could have penetrated her in said standing position.

Nor are we persuaded with the accused-appellant's assertion that since Cherry Grace's buttocks was not "lifted," no sexual coitus could have happened. In no uncertain terms, Cherry Grace testified that in all the times that the accused-appellant was raping her, she was pinned to the wall or pushed to the post, making possible the insertion of his penis into her vagina even without the lifting of her buttocks. Stated differently, the accused-appellant consummated said rapes by forcing himself into her vagina while she was pinned to a wall or pushed to a post. There was therefore no need for him to lift her buttocks. Verily, with her clear and categorical testimony that he inserted his penis inside her vagina, there can be no other conclusion than that his penis touched her labia majora or the labia minora of her pudendum, thereby, constituting consummated rape.[115]

Moreover, Cherry Grace's testimony was corroborated by Dr. Loreto G. Leonido who testified that, as he declared in the medical certificate, after he examined Cherry Grace, he found (a) that she has "(c)omplete, healed laceration with rounded, non-coaptable borders and retraction of the edges of the hymen at 6 o'clock;" (b) that a "(t)est tube with a diameter of 3/4 inch entered easily the vagina;" (c) that there was "(e)rythema of the vulva;" (d) that it was possible that the laceration could have been caused by the organ of a person; and (e) that since said test tube easily entered her vagina, it could be possible that she had several sexual intercourse.[116] It is settled that "(t)he mere introduction of the male organ in the labia majora of the victim's genitalia consummates the crime;"[117] and that the medical evidence, notably the finding of healed lacerations on the victim's private parts, supports the theory that Cherry Grace had been a victim of rape.[118] In any event, the established facts and circumstances lead us to the ineluctable conclusion that Cherry Grace was raped, what with (a) her positive identification of the accused-appellant, declaration that he made her stand on the bangkito, pinned her against the wall, removed her shorts, and inserted his sex organ in her vagina; and (b) Dr. Leonido's findings of the presence

of healed laceration in her vagina.

At any rate, we are not persuaded by the accused-appellant's contention that Cherry Grace is not a credible witness.

(T)he Court has said time and time again that "the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted." [119]

Here, the trial court found, to which finding we fully agree, that Cherry Grace's testimony was credible, viz:

In answer to the questions on cross examination, Cherry Grace admitted certain reasons why she finally revealed what her father has been doing to her (T.S.N., March 2, 1999, p. 11) but then this Court believes that "even if complainant is consumed with revenge, it takes a certain amount of psychological depravity for a young woman to concoct a story which would put her own father as a candidate for lethal injection and drag herself and the rest of her family to a lifetime of shame" (People v. Melivo, 253 SCRA 347).

Neither would the cruelty of her father be sufficient for the complainant to file a charge so serious as the heinous crime of rape against her father simply because she was maltreated, only the compulsive motive to seek justice could be strong enough for her to implicate her flesh and blood (People v. Esquila, 254 SCRA 140).

Indeed, as early "as in the case of People v. Villaroya, [120] we ruled that 'hatred cannot be considered sufficient motive to testify falsely to convict a person for a crime punishable by death.'" A careful review of the evidence on record shows that Cherry Grace testified on the details of the rapes in a straightforward, positive and convincing manner. She did not waiver even during cross-examination, despite her tender age. "It is an established rule that courts usually give credence to the testimony of a girl who is a victim of sexual assault, particularly if it constitutes incestuous rape because, normally, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice." [121]

Besides, we find unworthy of belief and credence the accused-appellant's claim that Cherry Grace charged him with rape because she and his in-laws connived with each other in maliciously charging him with committing the acts of rape against Cherry Grace. He asserts that Cherry Grace was raped not by him but by Leopoldo Magistrado, whose wife is the sister of the accused-appellant's mother-in-law. [122] He claims that he saw Magistrado place Cherry Grace on the latter's lap, pull down her shorts and use her. [123] Even if we were to assume for the sake of argument that she had sexual intercourse with Magistrado at the time the accused-appellant saw them together, such does not contradict the version of the prosecution that she was raped by the accused-appellant fourteen (14) times on different dates.

What is more, it is unbelievable that Cherry Grace's mother would expose her to embarrassment, ridicule and stigma just to ensure that Magistrado would not be held liable for his alleged sexual act with Cherry Grace. "No self-respecting individual would want to subject a loved one to the rigors of public trial and the trauma of rigid cross-examination by opposing counsels if (s)he was not purely and solely motivated by the desire to punish the perpetrator of the crime." [124]

Anent Cherry Grace's delay in reporting the acts of rape against her, suffice it to state that her failure to immediately report the same does not detract from her credibility, her timidity and hesitation being attributable to her age, the moral ascendancy of the accused-appellant over her, and his threats against her and her family. [125] It is extant from the records that Cherry Grace testified that the accused-appellant threatened to kill her and her

family if she divulged to anybody what he had been doing to her. It was thus quite natural for her to be scared and to keep her horrible ordeal to herself until she found enough courage to disclose the same to her grandmother. Cherry Grace's reluctance to disclose what the accused-appellant did to her did not render her testimony unworthy of belief. Settled is the rule that delay in reporting a rape incident due to death threats are not to be taken against the victim.[126]

Furthermore, it bears stressing that Cherry Grace indeed may have failed to escape from the accused-appellant at the earliest opportunity, and even stayed at home even after he raped her fourteen (14) times, but "different people react differently to different situations and there is no standard form of human behavioral response when one is confronted with a frightful experience. The victim's mien, rather than composure, could mean resignation, considering her continuing suffering or apoplexy and numbness as the aftermath of her ordeal." [127] The fact, therefore, that Cherry Grace failed to run away immediately from the accused-appellant and avoid his evil clutches should not be taken against her.

We thus hold that the accused-appellant's defense of denial cannot overcome Cherry Grace's positive testimony that he raped her fourteen (14) times, which was substantially corroborated by the other prosecution witnesses. "The rule is that the positive and categorical assertions of witnesses generally prevail over bare denials." [128] Such "accordance of greater probative value to evidence that is positive in nature than that which is negative in character is a time-honored principle. Hence, the negative assertions of the accused-appellant cannot prevail over the positive testimony of the complainants." [129] Without doubt, Cherry Grace's unwavering and positive identification of her father as her defiler and tormentor cannot prevail over the latter's defense of denial the same being feeble, flimsy, self-serving and uncorroborated.[130]

Neither do we find meritorious the accused-appellant's claim that he could not have raped Cherry Grace because from September 1995 to April 1998, he sometimes worked in Legaspi. The defense of alibi is inherently weak, unreliable and easily fabricated. "For alibi to serve as basis for acquittal, it must be established with clear and convincing evidence. The requisites of time and place must be strictly met." [131] Here, the accused-appellant failed to reasonably demonstrate that during the time the rapes were committed upon Cherry Grace, it was physically impossible for him to have been in their house at San Vicente Sur, Iriga City, where Cherry Grace was raped fourteen (14) times. It was not sufficiently proven that both the house at San Vicente Sur and the place where he allegedly worked at Legaspi were too far apart to make it possible for the accused-appellant to have raped Cherry Grace on the dates stated in the aforementioned informations against him.

Be that as it may, while we affirm the trial court's judgment of conviction, we do not agree with the trial court's imposition of the death penalty. As we declared in *People v. Esureña*, [132] to wit:

Under Republic Act No. 7659, the imposition of the death penalty in rape cases becomes mandatory when the offended party is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. The qualifying circumstances of age and relationship of the victim to the accused must specifically be alleged and proved (*People v. Villaraza*, G.R. Nos. 131848-50, September 5, 2000, p. 22, citing *People v. Manggasin*, 306 SCRA 228 [1999]).

In the case of *People v. Manuel Liban* (G.R. No. 138330, November 22, 2000), this Court ruled that the birth certificate of the victim or in lieu thereof, any other documentary evidence that can help establish the age of the victim should be presented.

In *People v. Javier* (311 SCRA 122 [1999]), we required the presentation of the birth certificate of the victim to prove her minority, failing which the imposition of the death penalty cannot be upheld.

In the case at bar, although the minority of the victim was alleged in the information, the same was not duly proved during the trial of the case. No evidence was presented to show Nena's age, save for her own testimony. It has been held that while the testimony of a person as to her age, although hearsay, is admissible as evidence of family tradition, it cannot be considered proof of age beyond reasonable doubt (*People v. Pine*, 346 SCRA 383, 393 [2000]). Hence, the qualifying circumstance of minority cannot be appreciated, and accordingly the death penalty cannot be imposed (*People v. Virrey*, G.R. No. 133910, November 14, 2001).

It is a time-honored principle that in a criminal prosecution, especially where the life of another human being is hanging on the balance, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which the accused is charged must be established in order for the corresponding penalty thereto to be upheld.

On the other hand, the qualifying circumstance that the rape was committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity (Revised Penal Code, Article 266-B, sixth paragraph, subparagraph [3]) although proved, was not alleged in the Information. As such, it also cannot be appreciated to warrant the imposition of the death penalty. Qualifying circumstances which increase the penalty by degree rather than merely affect the period of the penalty, as in the case of aggravating circumstances, must be properly pleaded in the information consistent with the constitutional right of the accused to be informed of the charges against him (*People v. Labayne*, G.R. No. 132170, April 20, 2001).

Since accused-appellant Antonio is only guilty of simple rape, the amounts awarded as damages must be modified. The amount of P100,000.00 which the trial court awarded as compensatory damages must be reduced to P50,000.00, while the award of P50,000.00 as moral damages is justified and should be maintained (*People v. Pamilar*, G.R. No. 130846, October 23, 2001). Further, the amount of P25,000.00 should be awarded as exemplary damages, to deter fathers with perverse tendencies and aberrant sexual behavior, like accused-appellant, from sexually abusing their daughters.

The records show that although the victim's minority was alleged in the informations in these cases, the same was not duly proven during the trial. There was no evidence presented to prove Cherry Grace's age. Consequently, the accused-appellant can only be sentenced to suffer the penalty of reclusion perpetua, instead of death, in all the subject cases.

We likewise award moral damages of P50,000.00 to the victim in each count of rape pursuant to the Court's current policy that "moral damages are automatically awarded to rape victims without need of proof for it is assumed that they have suffered moral injuries entitling them to such award." [133] Moreover, we award exemplary damages of P25,000.00 in each count of rape, "to deter fathers with perverse tendencies and aberrant sexual behavior, like accused-appellant, from sexually abusing their daughters." [134] We also find that the accused-appellant is liable to pay Cherry Grace civil indemnity *ex delicto*. Pursuant to existing jurisprudence, [135] Cherry Grace is entitled to the amount of P50,000 as civil indemnity *ex delicto* for each count of rape.

WHEREFORE, the decision of the Regional Trial Court in Iriga City, Branch 37, in these cases finding the accused-appellant Domingo D. Patanayan Jr. guilty beyond reasonable doubt of the crime of rape, is hereby **AFFIRMED** with **MODIFICATION**. As modified, the accused-appellant is sentenced to suffer the penalty of reclusion perpetua in each count of rape, instead of death; and he is ordered to pay the victim, Cherry Grace M. Patanayan, in each count of rape, the sum of P50,000.00 as civil indemnity *ex delicto*, P50,000.00 as moral damages, and P25,000.00 as exemplary damages. Costs against the accused-appellant.

SO ORDERED.

Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

Davide, Jr., C.J., on official leave.

Bellosillo, J., No part. Did not participate in deliberation.

[1] Rollo, p. 38.

[2] Id., at 39.

[3] Id., at 40.

[4] Id., at 41.

[5] Id., at 42.

[6] Id., at 43.

[7] Id., at 44.

[8] Id., at 45.

[9] Id., at 46.

[10] Id., at 47.

[11] Id., at 48.

[12] Id., at 49.

[13] Id., at 50.

[14] Id., at 51.

[15] Id., at 65.

[16] Id., at 75.

[17] TSN, January 26, 1999, p. 7.

[18] Id., at 8.

[19] Ibid.

[20] Id., at 9.

[21] Ibid.

[22] Ibid.

[23] Id., at 10.

[24] Id., at 11.

[25] Ibid.

[26] Ibid.

- [27] Id., at 12.
- [28] Ibid.
- [29] Ibid.
- [30] Id., at 13.
- [31] Ibid.
- [32] Id., at 15.
- [33] Ibid.
- [34] Id., at 16.
- [35] Ibid.
- [36] Id., at 16-17.
- [37] Id., at 17.
- [38] Ibid.
- [39] Id., at 19.
- [40] Ibid.
- [41] Ibid.
- [42] Ibid.
- [43] Id., at 20.
- [44] Id., at 22.
- [45] Ibid.
- [46] Id., at 20-21.
- [47] Id., at 21.
- [48] Ibid.
- [49] Ibid.
- [50] Ibid.
- [51] Id., at 22.
- [52] Id., at 23.
- [53] Ibid.
- [54] Ibid.
- [55] Id., at 24.
- [56] Ibid
- [57] Ibid

- [58] *Id.*, at 25.
- [59] *Ibid.*
- [60] *Ibid.*
- [61] *Id.*, at 26.
- [62] *Id.*, January 27, 1999, p. 3.
- [63] *Id.*, at 4.
- [64] *Ibid.*
- [65] *Ibid.*
- [66] *Ibid.*
- [67] *Id.*, at 5.
- [68] *Ibid.*
- [69] *Id.*, at 5-6.
- [70] *Id.*, at 6.
- [71] *Ibid.*
- [72] *Id.*, at 8.
- [73] *Ibid.*
- [74] *Ibid.*
- [75] *Ibid.*
- [76] *Id.*, at 9.
- [77] *Ibid.*
- [78] *Ibid.*
- [79] *Ibid.*
- [80] *Id.*, at 10.
- [81] *Ibid.*
- [82] *Ibid.*
- [83] *Ibid.*
- [84] *Ibid.*
- [85] *Id.*, at 10-11.
- [86] *Id.*, at 11.
- [87] *Ibid.*
- [88] *Ibid.*

- [89] *Id.*, at 12.
- [90] *Ibid.*
- [91] *Id.*, at 13.
- [92] *Ibid.*
- [93] *Ibid.*
- [94] *Ibid.*
- [95] *Id.*, at 14.
- [96] *Ibid.*
- [97] *Ibid.*
- [98] *Ibid.*
- [99] *Ibid.*
- [100] *Ibid.*
- [101] *Id.*, at 15.
- [102] *Ibid.*
- [103] Records of Criminal Case No. IR-4769, p. 6; Exhibit "A".
- [104] Rollo, 95 -96 .
- [105] *People v. Castro*, 196 SCRA 679, 685 [1991].
- [106] TSN, January 26, 1999, pp. 11, 16, 19, 21, 23-25; TSN, January 27, 1999, pp. 4, 5, 8, 9, 11, 12, and 14.
- [107] *Id.*, March 2, 1999, p. 10.
- [108] *Id.*, June 17, 1999, p. 3.
- [109] *Id.*, January 26, 1999, p. 14.
- [110] *Id.*, March 2, 1999, pp. 3-4.
- [111] *Id.*, February 8, 1999, pp. 35 and 41.
- [112] *Id.*, at 41-42.
- [113] *Id.*, March 2, 1999, pp. 20-21.
- [114] *Id.*, at 20.
- [115] See *People v. Campuhan*, G.R. No. 129433, March 30, 2000.
- [116] TSN, January 25, 1999, pp. 5-7.
- [117] *People v. Gilbero*, G.R. No. 142005, January 23, 2002, citing *People vs. Almacin*, 303 SCRA 399 (1999).
- [118] *People v. Esureña*, G.R. No. 142727, January 23, 2002 citing *People v. Seguis*, G.R. No. 135034, January 18, 2001.

[119] *People v. Gonzales, Jr.*, G.R. Nos. 143143-44, January 15, 2002, citing *People v. Tabones*, 304 SCRA 781, 791, March 17, 1999; see also *People v. Parcia*, G.R. No. 141136, January 28, 2002 citing *People v. Brigildo*, 323 SCRA 631 (2000); *People v. Lopez*, 302 SCRA 669 (1999); *People v. Mahinay*, 302 SCRA 455 (1999).

[120] 101 Phil. 1061 (1957).

[121] *People v. Esureña*, supra, citing *People v. Dizon*, G.R. Nos. 134522-24 and 139508-09, April 3, 2001; see also *People v. Catoltol*, 265 SCRA 109 (1996); *People v. Abordo*, 258 SCRA 571 (1996).

[122] Rollo, pp. 110-111.

[123] Ibid.

[124] *People v. Parcia*, supra, citing *People v. Lasala*, 318 SCRA 241 (1999); *People v. Vergel*, 316 SCRA 199 (1999); *People v. Escobar*, 281 SCRA 498 (1997).

[125] *People v. Abad*, G.R. No. 114144, February 13, 1997 268 SCRA 246, citing *People v. Dio*, 226 SCRA 176 (1993); *People v. Historillo*, G.R. No. 130408, June 16, 2000, citing *People v. Antipona*, G.R. No. 119071, June 19, 1997.

[126] *People v. Delos Reyes*, G.R. No. 124895, March 1, 2000, citing *People v. Montefalcon*, G.R. No. 116741-43, March 25, 1999, citing *People v. Sarellana*, 233 SCRA 31.

[127] *People v. Rabosa*, G.R. No. 119362, June 19, 1997, 273 SCRA 142.

[128] *People v. Gonzales, Jr.*, supra, citing *People v. Chua*, 297 SCRA 229, 237, October 7, 1998.

[129] *People v. Gonzales, Jr.*, supra, citing *People v. Meris*, 329 SCRA 33, 46, March 28, 2000; see also *People v. Parcia*, supra, citing *People v. Brigildo*, supra; *People v. Alcala*, 307 SCRA 330 (1999).

[130] *People v. Delovino*, 247 SCRA 637, 649 (1995); *People v. Gomez*, 251 SCRA 455, 470 (1995).

[131] *People v. Canada*, 253 SCRA 277 (1996).

[132] Supra.

[133] *People v. Gonzales, Jr.*, supra, citing *People v. Del Mundo Sr.*, GR No. 132065, April 3, 2001.

[134] *People v. Esureña*, supra .

[135] *People v. Gonzales, Jr.*, supra, citing *People v. Narido*, 316 SCRA 131, October 1, 1999; *People v. De La Cuesta*, 304 SCRA 83, March 2, 1999; *People v. Prades*, 293 SCRA 411, July 30, 1998.

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