

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO TAMSI Y ACOSTA, ACCUSED-APPELLANT.*G.R. Nos. 142928-29. September 11, 2002*

Ponente: CARPIO, J.

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In incestuous rape cases, the presence of the special qualifying circumstances of the complainant's minority and relationship with the accused warrants the imposition of the death penalty. However, the prosecution must prove the twin circumstances with the same certainty and clearness as the crime itself. Proof beyond reasonable doubt is the standard required in proving the complainant's minority and kinship with the accused. This is understandably so because the life of the accused is at stake. Anything short of proof beyond reasonable doubt will not justify the imposition of the extreme penalty of death. The proper penalty in such a case is reclusion perpetua.

The Case

This is an automatic review of the decision[1] of the Regional Trial Court, Branch 4, Balanga, Bataan, finding appellant Renato Tamsi ("appellant" for brevity) guilty of two counts of rape. The trial court sentenced appellant to suffer the penalty of death for each count of rape and to pay the complainant Remily Tamsi ("Remily" for brevity) the amounts of P 75,000.00 as civil indemnity and P50,000.00 as moral damages in each of the two cases.

The Charge

The public prosecutor charged appellant of raping Remily, appellant's own daughter, on April 19, 1996 and July 16, 1996. Except for the dates of the commission of the rapes, the two Informations against appellant read alike, thus:

"That on or about [date][2] at Lupang Pangako, Brgy. Mt. View, Mariveles, Bataan, Philippines and within the jurisdiction of this Honorable Court, the said accused thru force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed to have sexual intercourse with the offended party REMILY M. TAMSI, a 13 year-old minor girl, who is his daughter, against the will and consent of the latter, to her damage and prejudice." [3]

Arraignment and Plea

On October 22, 1996, appellant, assisted by counsel, pleaded not guilty to the two Informations of rape.[4] The Informations for the rape committed on April 19, 1996 and July 16, 1996 were docketed respectively as Criminal Case Nos. ML-1098 and ML-1097. The two cases were then consolidated and jointly tried.

The Trial

The prosecution submitted documentary evidence and presented four witnesses, namely: (1) Remily; (2) Emily Tamsi ("Emily" for brevity), the mother of Remily; (3) Dr. Josephine del Carmen ("Dr. del Carmen" for brevity), a resident physician of the Bataan Provincial Hospital; and (4) Loida S. Caubalejo, an employee of the

Department of Social Work and Development. The defense presented the following witnesses: (1) appellant; (2) Benito Tamsi, Sr. ("Benito, Sr." for brevity), older brother of appellant; and (3) Benito Tamsi, Jr. ("Benito, Jr." for brevity), nephew of appellant. The defense did not adduce any documentary evidence.

The Version of the Prosecution

The Office of the Solicitor General summarizes the testimonies of the prosecution witnesses as follows:

"Remily Tamsi, the victim, testified that on two (2) occasions, April 19, 1996, her father's birthday and on July 16, 1996, while they were afflicted with chicken pox, she was raped by her father inside their house at Lupang Pangako, Mariveles, Bataan (p. 4, TSN, January 7, 1997).

On April 19, 1996, about 10:00 o'clock in the evening while the young Remily was resting, lying down, and was about to sleep, her father entered her room wearing white T-shirt and black shorts and then proceeded to her bed (p. 5, *ibid.*). She suddenly stood up but was pushed by her father back to her bed (*ibid.*). Then he held up her two (2) hands and removed her clothes (p. 6, *ibid.*). She was then wearing a t-shirt and pink pajamas (*ibid.*). Her father removed first her shirt, then her pajamas and panties (*ibid.*). While her father was removing her panties, he told her not to shout (*ibid.*). She remained silent afterwards as she was threatened by her father not to tell her mother otherwise, he would kill her (*ibid.*). After her clothes were removed, her father removed his clothes and raped her. She felt something come out from his organ (p. 7, *ibid.*). She tried to get away from him but was unsuccessful (*ibid.*).

After the rape, said minor victim felt severe pain all over her body, but remained silent and just cried as she was threatened not to tell her mother what happened on his threat that he would kill her (p. 10, *ibid.*). She was threatened by appellant while he was undressing her and after he raped her (p. 19, *ibid.*).

Remily's father also went to her on July 16, 1996 as she was sleeping inside her room (p. 12, *ibid.*). When she woke up, she saw him in front of her (p. 12, *ibid.*). He had entered her room and went inside her mosquito net (p. 13, *ibid.*). As she stood up, her father told her not to create noise or shout (p. 14, *ibid.*), and she felt afraid (p. 14, *ibid.*). Then, her father undressed her and he too undressed himself, and then he sexually violated her (*ibid.*). Afterwards, he dressed up and proceeded to his room (*ibid.*).

Emily Tamsi, mother of the minor victim, testified that she noticed on July 17, 1996 that her daughter was restless and acting not herself (p. 2, TSN, January 29, 1997). So Emily had a heart-to-heart talk with her young daughter and learned of the two rape incidents (*ibid.*). After her daughter was examined at the Bataan Provincial Hospital, they went to the Investigation Section of the Police Station at the Municipal Building of Mariveles, Bataan, to file the case against her husband (p. 8, *ibid.*).

Dr. Josephine T. del Carmen, who was then a resident physician of the Bataan Provincial Hospital under the OB-Gyne Section since February 1996, gave her testimony: that upon medical examination, she found the victim with no hematoma, no abrasion, but with scabs and scars which, according to her, were due to chicken pox, axilla with few axillary hair; that her breast was globular with light brown areola and inverted nipple; that the most important state is the genitalia, with few pubic hair; the labia mejora and labia minora were closely opposed; the hymenal ring had deep healed laceration at 3, 9 o'clock positions with superficial healed laceration at 11 and 1 o'clock positions, post fourchette U shape, which examination was marked as Exhibit "C". She examined the victim and found old lacerations (pp. 3-7, TSN, January 22, 1997)."[5]

The Version of the Defense

Appellant denies raping Remily, his daughter. In this appeal, appellant recounts the testimonies of the defense witnesses, to wit:

"The defense presented Renato Tamsi, the accused himself. When his counsel propounded questions to him, he kept on responding that he could not remember anymore. His counsel made a manifestation and asked for a

motion for mental examination. (TSN, March 25, 1997, pp. 2-6) On the next hearing, the counsel moved for the withdrawal of his representation because the accused was uncooperative (TSN, April 8, 1997) which the lower court, however, denied.

The defense presented Benito Tamsi, Jr. He testified that on April 19, 1996 while cleaning their vehicle, he borrowed a screwdriver from Renato Tamsi upon the instruction of his father. That Renato asked him to sleep in Renato's house because they were sick. That he and his mother slept at the house of Renato. (TSN, April 22, 1998, pp. 6-10).

The next witness for the defense was Benito Tamsi, Jr.. He testified that on April 19, 1996, Renato Tamsi arrived and because it was the latter's birthday they had a drinking spree from 4:00 o'clock in the afternoon to 7:00 o'clock in the evening. Then, he proceeded to his in-law's house to fetch his wife at 7:05 o'clock, and while at that place, the accused Renato and Benito Tamsi, Jr. arrived and that he did not allow the accused to leave that place for the latter was a little bit tipsy. The accused slept in that place. He further testified that on July 16, 1996, while in his house, his son arrived and told him if it was possible for him to sleep at the accused's house because the latter's family was sick. His wife acceded and after taking their dinner, his son and wife went to the house of the accused.

That the testimony of Remily Tamsi (the victim) was not true because he was with the accused during the alleged date (April 19, 1996) and also it was not true that the victim was raped on July 16, 1996 because his wife was there at the house of the accused. (TSN's July 1997, pp. 4-11; August 26, 1997, pp. 7-12)."[6]

The Trial Court's Ruling

After trial, the court rendered its judgment dated June 6, 2000 convicting appellant of two counts of rape and imposing on him the penalty of death for each count, thus:

"WHEREFORE, premises considered, the court finds the accused Renato Tamsi GUILTY beyond reasonable doubt of the crime of rape (2 counts) penalized under Art. 335[7] of the Revised Penal Code as amended by R.A. 7659, Sec. 11 and hereby sentences him to death and to indemnify Remily Tamsi in the amount of P75,000.00 and P50,000.00 moral damages in each of the two (2) cases.

SO ORDERED."[8]

Issues

Appellant argues for his acquittal, raising these issues as grounds for the reversal of the judgment of conviction:

"I

THE COURT A QUO COMMITTED A REVERSIBLE ERROR IN CONVICTING ACCUSED-APPELLANT ON THE BASIS OF THE INCREDIBLE AND INCONSISTENT STATEMENTS OF THE PROSECUTION WITNESSES.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE HAS BEEN PROVEN BEYOND REASONABLE DOUBT."[9]

The Court's Ruling

We agree with the trial court that appellant's guilt for the two charges of rape has been proven beyond reasonable doubt. However, we cannot sanction the imposition of the death penalty for each count of rape in view of the

prosecution's failure to prove with certainty Remily's minority. The proper penalty therefore is reclusion perpetua for each count of rape, not death.

Appellant concedes that when the issue is a matter of credibility, the trial court judge is in a better position to pass judgment on the credibility of witnesses, having had the opportunity to personally hear them, observe their deportment and manner of testifying.[10] However, appellant points out that the testimonies of the prosecution witnesses, particularly of the complainant, are so incredible and inconsistent in a number of material aspects such that these inconsistencies should have raised doubt in his favor. To prove his point, appellant cites the following portions of Remily's testimony:

“ATTY. DOMINGO to complainant Remily Tamsi on cross-examination:

Q: So, let us clarify this matter, when I asked you if on the night of April 19, 1996 that was the first time that your brother slept in the sala, you stated in the affirmative, do you remember having made that statement?

A: Yes, sir.

Q: I followed up that question and you answered that even before April 19, 1996 your brother slept in the sala, do you remember having stated that?

A: Yes, sir.

Q: Do you know that these statements of yours are grammatically opposed to each other. My question is this two (2) conflicting statements of yours is correct?

A: He was previously sleeping in the said sala, sir.

Q: You answered to my question earlier that April 19, 1996 was the first time that your brother slept in the sala, is not correct?

A: Yes, sir.

Q: If that is not correct then why did you say that?

A: I did not think about it, sir.

Q: Madam witness, you will admit that when you claimed that April 19, 1996 was the first time that your brother slept in the sala you admit that you were lying, is that correct? You told a lie because your statement is not correct?

A: I cannot understand, sir.

Q: You cannot understand or you ready to answer the question?

A: I do not understand, sir.

ATTY. DOMINGO:

Let us go back there for you to understand it. My question to you is, you made two (2) opposing claims madam witness, you stated that the night of April 19, 1996 was the first time that your brother slept at the sala and then you made another statement saying that even before the night of April 19, 1996 your brother slept at the sala. When I asked you which of these two (2) statements of yours is correct you stated that your statement, even before April 19, 1996 your brother was already sleeping in the sala is correct and so, your statement that April 19, 1996 was the first time that your brother slept in the sala is not correct? Do you understand that? And then you later made a statement; at the second statement that your brother slept in the sala on April 19, 1996 is not correct?

A: Now, I understand, sir.

Q: My question is, so you admitted lying before this Honorable Court when you stated that the first time that your brother slept in the sala was on the night of April 19, 1996?

FISCAL TARIO:

Your honor, we would like to request that counsel for the defense should advise the victim in a human way, besides we believed that the counsel has already made his point regarding that matter.

ATTY. DOMINGO:

No, your honor, I am just testing the credibility of the witness considering the gravity of the offense with which the accused is being charged and because his life is endangered,

FISCAL TARIO:

The witness had already explained that there was an error on her part because the question propounded to her was not understood by her.

ATTY. DOMINGO:

So, it is now the position of the prosecution that the witness lied before this Honorable Court?

COURT:

It is up to the court to appreciate whether she is lying or not.

You go to another point. (TSN, January 7, 1997, pp. 30-32)"[11]

Quoting this portion of the testimony of Remily, appellant apparently wants to call attention to Remily's conflicting statements. Remily at first said that the evening of April 19, 1996 was the first time that her brother slept in the "sala" (living room). Later on, Remily stated that even before that date her brother had already slept in the "sala". Presumably, appellant believes that the contradictory statements should have damaged Remily's credibility.

It is true that the quoted portions of Remily's testimony show that she made two conflicting statements. However, it is evident that she was confused at the time she was being cross-examined because she could not understand the defense counsel's questions. The prosecution at one point explained to the defense counsel that Remily could not understand the questions that he was propounding. When the defense counsel insinuated that the prosecution was admitting that Remily was lying, the trial court judge reminded him that it is the court that would determine whether Remily was lying. The trial court obviously did not take Remily's conflicting statements to mean that she had lied since it gave more weight to her testimony when it convicted appellant. In fact, the trial court described Remily's testimony as "straightforward, candid and firm." [12] We have reviewed the transcript of stenographic notes in their entirety and hold that the trial court committed no error when it disregarded the inconsistent statements because these statements clearly refer to minor matters. That Remily was unable to state with certainty that it was the first time her brother slept in the "sala" that evening, a minor point, does not discredit Remily's narration of the actual sexual assault that occurred on April 19, 1996.

Appellant also exhorts us to scrutinize the following portions of Remily's testimony on cross-examination because they allegedly prove that her account of the details of the rape is inconsistent and unclear:

"ATTY. DOMINGO TO REMILY TAMSI

Q: While your father was on top of you did not cry any noise to arouse or call the attention of your brother and

sister, is that right?

A: No, sir.

Q: While your father was on top of you his waist is between your legs, is that correct?

A: His private part was parallel to my private part, sir.

Q: Are you saying that while your father was on top of you your legs are not separated?

A: They were somewhat near each other, sir.

x x x

Q: Your father's organ penetrated a little your organ while your legs are not too much apart from each other, is that correct?

A: They were a bit apart, sir.

Q: They were a bit apart but there was no time that your father placed himself in between your legs is that correct?

A: Yes, sir.

x x x

Q: And because of what your mother told you relative to your father's attempt to molest your aunt you are angry and very mad to your father, is that correct?

A: Yes, sir.

x x x

Q: Now, you have already executed a sworn statement in connection with this case, again I am showing to you this sworn statement for purposes of confirmation, is this your sworn statement that you executed?

A: Yes, sir.

Q: And you affirm before this Honorable Court that all the contents of this sworn statement are true and correct?

A: Yes sir.

Q: Now, this signature is your signature?

A: Yes, sir.

Q: I am reading, your Honor, question No. 6 "Maari bang isalaysay mo sa aking ang pangyayari na naganap gaya ng oras at buwan nanabanggit mo sa itaas nito?" to that question you responded by saying "Noong ika-19 ng Abril 1996, kaarawan po ng aking ama siya po ay bumili ng alak na hindi ko alam kung ilang bote at noon pong gabi na iyon ako po ay natutulog ng bigla na lang po akong nagising nang hubaran po niya ako ng pajama at panty at inililis niya ang aking t-shirt saka niya pinipisil ang aking suso, so forth, so on." Do you remember having given that answer?

A: Yes, sir.

Q: On the direct-examination and even on cross-examination you stated that when your father entered your room you were about to sleep, in your sworn statement you stated that "Noon pong gabi na iyon, ako po ay natutulog ng biglang. So on, so forth. Which is true now, the fact that when your father entered your room you

were about to sleep or the fact that when your father entered your room you were already asleep?

A: What I stated today, sir.

ATTY. DOMINGO:

Q: So, what is correct is that when your father entered your room you were about to sleep?

A: Yes, sir.

Q: So, your statement here in your sworn statement that when you were already asleep when your father entered the room is not correct.

FISCAL TARIO:

The statement referred to by counsel is more or less already pertains to the statement made by the investigator, your Honor.

ATTY. DOMINGO:

Is it the position of the prosecutor that this statement is made by the investigator and not the statement made by the witness.

FISCAL TARIO:

It is true, your Honor, that while this witness gave her statement before the police the first statement was translated and typed by the investigator.

ATTY. DOMINGO:

What I am confronting the witness is her statement which was previously identified by her and even she attested to the veracity and truthfulness of the contents thereof. I am just confronting the witness of her sworn statement.

x x x

ATTY. DOMINGO:

Q: You also stated during the direct-examination and even during the cross-examination that your father completely caused you to be naked, is that right?

A: Yes, sir.

Q: In your sworn statement in the same question No. 6, you responded by saying that your T-shirt was only raised, do you remember having made that declaration in your sworn statement?

A: No, sir.

Q: So, you did not give this to the police that your t-shirt was only raised, you did not give this statement to the police?

A: No, sir.

Q: So, would you confirm, madam witness that this statement contained in your sworn statement that your T-shirt was only raised up came from the police?

A: I can no longer remember, sir.

(TSN, January 8, 1997, 13-17).”[13]

Based on the foregoing testimony, appellant insists that the rape could not have been consummated since the position described by Remily made it impossible for penetration to happen. Remily stated that while appellant was on top of her, her legs were not separated and were somewhat near each other and there was no time for appellant to place his organ in between her legs.

We are not persuaded. The first incident of rape that occurred on April 19, 1996 was undoubtedly consummated based on Remily's consistent testimony that there was penetration. The just quoted portion of Remily's testimony on cross-examination, which appellant assails as full of contradictions and uncertainties, shows that Remily was in fact steadfast in saying that despite the awkward position - her legs were only slightly apart - there was still penetration, albeit only for a brief moment. Remily was consistent on this score. As early as in her direct examination, Remily had already mentioned that the penetration was only for a short while.

In *People vs. Campuhan*,^[14] where the demarcation line between attempted and consummated rape was further clarified, we declared that for rape to be considered consummated, the prosecution must establish that the penis penetrated at the very least the labia of the external genitalia, which is beneath the pudendum.^[15] Thus, no matter how brief the penetration, once there is entry or penetration of the penis into the labia, the rape is consummated. The mere grazing of the surface of the female organ or touching of the mons pubis of the pudendum is not sufficient to constitute consummated rape,^[16] but at most can only be attempted rape or mere acts of lasciviousness.

The appellant in *Campuhan* was convicted only of attempted rape because penetration was not established. There, the child-victim made a categorical statement denying penetration. In contrast, here Remily was unequivocal and unwavering in stating that there was penetration during the April 19, 1996 rape. Furthermore, for this particular count of rape, Remily mentioned several points that lead to a logical conclusion that the rape was indeed consummated. These are: (1) appellant inserted his organ into her organ, (2) she consequently felt pain, (3) she felt something come out from his organ, and (4) her organ bled after appellant inserted his penis into her organ for the first time. Remily narrated in court that:

“FISCAL TARIO:

Q: After he inserted his organ to your organ, what happened?

A: He caressed my breast and made a pull and push motion on top of me, sir.

Q: How long did this push and pull motion took place?

A: I don't know, sir.

Q: What happened when this push and pull motion was taken place?

A: I was trying to get away from him, sir.

Q: I was, were you successful in resisting him?

A: No, sir.

Q: How long did your father stayed on top of you?

A: Just for a while, sir.

Q: Now, Ms. Tamsi, how was your father able to place his organ to your organ?

A: He held on his organ and then inserted it on mine, sir.

Q: How did he hold his organ before placing it on your organ?

A: He held it, sir.

Q: Do you mean to say Ms. Tamsi, when your father entered your room, your father was already undressed?

A: - -

ATTY. DOMINGO:

Leading, your Honor.

COURT:

Q: When your father entered your room, what was he wearing?

A: White t-shirt and black shorts, sir.

Q: At the time that he placed himself on top of you? Was he still wearing that outfit?

A: He already removed his shortpants, your Honor.

Q: How about his brief?

A: Yes, sir.

FISCAL TARIO:

Q: Can you state to this Honorable Court at what point and time did your father remove his shorts and brief?

A: After he removed my clothes he remove his clothes, sir.

COURT:

Q: You stated that you were raped by your father Renato Tamsi, is your father inside the court room now?

A: Yes, your Honor.

Q: Please point to him if he is inside the court room?

A: (witness pointing to the man who when asked answered by the name of Renato Tamsi)

FISCAL TARIO:

Q: Do you still have a mother?

A: Yes, sir.

Q: What is the name of your mother?

A: Emily Tamsi, sir.

FISCAL TARIO:

Q: At the time you were raped by your father, where was your mother?

A: She went to work, sir.

Q: Where does your father work?

A: DUNLOP, sir.

Q: Do you know where is this DUNLOP located?

A: At Mariveles, Bataan, sir.

Q: On April 19, 1996 what time did your mother report for work?

A: Eight (8:00) o'clock , sir.

COURT:

Q: In the evening or in the morning?

A: In the evening, your Honor.

Q: You mentioned 10:00 o'clock when you were raped, was that in the evening or in the morning?

A: In the evening, your Honor.

FISCAL TARIO:

Q: Do you know what shift your mother is working on?

A: Ten (10:00) to six (6:00), sir.

Q: How did your father stop this push and pull motion?

A: He made that push and pull motion just for a short while, sir.

FISCAL TARIO:

Q: The first time that your father inserted his organ to your organ, what did you feel?

A: It was painful and then I felt something come out from him, sir.

Q: And what did you do when you felt that something came out from the organ of your father?

A: I cried, sir.

Q: What happened after that?

A: When he was putting on his clothings and then I was wearing back my underwear, I saw that my organ was bleeding, sir.

Q: Do you know what caused that bleeding?

A: No, sir.

Q: By the way, how old are you?

A: Thirteen (13), sir.

Q: After that incident on April 19, 1996, what did you do or what was your reaction, if any?

A: I felt severe pain all over my body. I remain silent, I just cried, sir.

Q: Why did you remain silent?

A: Because he threatened me not to tell what happened to my mother or else he will kill me, sir.”[17]
(Emphasis ours)

As for the rape that happened on July 16, 1996, Remily's testimony also proves that appellant had carnal

knowledge of her. Remily testified that she was already sleeping when her father, armed with a “bolo,”[18] went inside the mosquito net.[19] When Remily stood up, appellant told her not to make any noise.[20] Appellant undressed her and appellant also took off his clothes.[21] Appellant inserted his organ into her organ and made a push and pull motion.[22]

The Medico Legal Certificate shows that Remily’s hymenal ring has “deep healed lacerations at 3, 9’oclock position with superficial healed lacerations at 11, & 1 o’clock position.”[23] However, the exact cause of the lacerations was not established by Dr. del Carmen, the resident physician of Bataan Provincial Hospital, OB-Gyne Section, who examined Remily and prepared the Medical Certificate. Dr. del Carmen testified on direct examination that there are many causes of hymenal lacerations and it was difficult for her to find out the exact cause because at the time of the examination Remily was not talking at all.[24] Nonetheless, we find Remily’s credible testimony that there was penetration during those two instances of rape as sufficient to prove that undoubtedly appellant had carnal knowledge of her. The physician’s findings of penetration as a result of sexual intercourse merely supports Remily’s assertion. A medical examination of the victim, as well as the medical certificate, is only corroborative in character and is not an indispensable element in rape.[25] The unequivocal piece of evidence that appellant had carnal knowledge of Remily is her credible and consistent testimony that there was penetration when appellant sexually assaulted her.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,[26] sets out the elements of the crime of rape. It provides:

“ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

1. By using force or intimidation;
2. When a woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

xxx”

Through Remily’s credible testimony that there was penetration for each count of rape, the prosecution was able to successfully establish the essential element of carnal knowledge for Criminal Case Nos. ML-1097 and ML-1098. The other requisite, the presence of force or intimidation, also attended the commission of the rapes in these two cases. Remily testified that after appellant raped her in the evening of April 19, 1996, appellant threatened to kill her if she revealed her ordeal to her mother. On July 16, 1996, appellant had a “bolo” with him when he threatened her not to make any noise and then raped her. In any event, in the absence of threats and use of force, we have held that in cases of incestuous rape, the father’s moral ascendancy over the victim substitutes for violence or intimidation.[27] All told, the elements of the crime of rape in Criminal Case Nos. ML-1097 and ML-1098 have been proven beyond reasonable doubt.

In a feeble attempt to reverse the judgment of conviction, appellant harps on the discrepancies between Remily’s testimony and her sworn statement. We have ruled that discrepancies between sworn statements and testimonies made at the witness stand do not necessarily discredit a witness.[28] Remily’s credibility was put to the test on the witness stand. Unshaken by the punishing cross-examination, Remily reiterated that what she was declaring in open court was the truth[29] - that she was about to sleep when her father entered the room, and not what was stated in the affidavit that she was already sleeping when her father entered the room.[30] Remily also denied making the statement in the affidavit that her father merely raised her T-shirt.[31] In court, Remily categorically stated that appellant caused her to be completely naked.[32] We hold that Remily’s testimony in open court

prevails over her sworn statement. As a general rule, testimonial evidence carries more weight than sworn statements because testimonies given during trial are more exact and elaborate.[33] Sworn statements are often executed when an affiant's mental faculties are not in such a state as to afford the affiant a fair opportunity of narrating in full the incident which transpired.[34]

Moreover, the discrepancies pointed out by appellant refer to minor matters and have no substantial effect on the nature of the offense. Whether Remily was asleep or was only about to sleep when appellant entered the room, or whether she was completely naked or her T-shirt was merely raised up, do not materially relate to the actual commission of the rape. What is telling is that throughout Remily's testimony, she was definite in stating that there was penetration during the rapes that took place on April 19, 1996 and July 16, 1996.

The defense of alibi advanced by Benito Sr. for appellant fails to convince us. Benito Sr., the brother of appellant, testified that it was impossible for appellant to have raped Remily at 10:00 p.m. on April 19, 1996 because he and appellant spent the night at the house of his mother-in-law in Lamao, Limay, Bataan. Lamao is approximately 30 kilometers away from Lupang Pangako, Mariveles, Bataan where the rape occurred and where appellant lives with Remily. Benito, Sr. claimed that it was in Lamao where appellant slept on the sofa at around 9:30 p.m. while he and his wife slept at around 10:30 p.m. in the room adjacent to the sofa. Appellant allegedly stayed in Lamao until the next morning.

The defense of alibi requires an accused to prove his presence in another place at the time of the perpetration of the offense and to demonstrate the physical impossibility for him to be at the scene of the crime.[35] For alibi therefore to prosper, two (2) elements must concur: (a) the accused was in another place at the time the crime was committed and, (b) it would be physically impossible for the accused to be at the scene of the crime at the time it was committed.[36]

Assuming that appellant was indeed in Lamao that evening, it would have been still possible for appellant to return to Lupang Pangako and rape Remily, at around 10:00 in the evening. Benito Sr. admitted that it took him 25 minutes to traverse the 30-kilometer distance. Benito, Sr. testified that he left Lupang Pangako at 7:05 p.m. and reached Lamao at 7:30 p.m. driving his tricycle through the Roman Expressway.[37] Benito, Sr. mentioned that appellant immediately followed him to Lamao right after he left Lupang Pangako. Appellant drove his own tricycle, arriving in Lamao at 7:45 p.m., taking appellant approximately 30 minutes to negotiate the same distance.[38] Thus, it would not have been physically impossible for appellant to return to Lupang Pangako to perpetrate the rape.

No jurisprudence in criminal cases is more settled than that alibi is the weakest of all defenses, for which reason it should be rejected when the identity of the accused is sufficiently and positively established by credible eyewitnesses to the crime.[39] Remily vividly recalls the April 19, 1996 rape because this was the first incident of rape and this was also the birthday of appellant, her own father. Remily's positive identification of appellant as the person who ravished her therefore outweighs the negative averment of the defense.

For alibi to be worthy of credence, it must receive credible corroboration from disinterested witnesses. Aside from the fact that appellant could not account for his whereabouts,[40] Benito Sr., the person who provided appellant's alibi, is the brother of appellant. The defense of alibi will not prosper if it is established mainly by the accused himself and his relatives, and not by credible and disinterested persons.[41]

For the July 16, 1996 rape, the case of the defense relied on the testimony of Benito, Jr., the nephew of appellant. Benito Jr., testified that appellant asked him and his mother to sleep in the house of appellant because appellant and his family were stricken with chicken pox.[42] According to Benito Jr., there was no unusual incident that night they slept in the house of appellant.[43] However, Benito Jr. could not remember the date when he and his

mother slept in the house of appellant.[44]

Benito, Jr.'s testimony is not sufficient to exonerate appellant for the July 16, 1996 rape of Remily. Benito Jr. was uncertain as to the exact date when he and his mother slept in the house of appellant. All that Benito Jr. could recall is that the sleepover happened around the time the family of appellant was suffering from chicken pox. We take judicial notice[45] that chicken pox can afflict a person for several days. Hence, Benito Jr.'s failure to specify when he and his mother slept in the house of appellant precludes us from concluding that they were in the house of appellant that fateful evening of July 16, 1996.

Also, by Benito Jr.'s own account, he slept in the "sala" and it was his mother who slept beside Remily. It is therefore his mother who is in a better position to testify if Remily was raped assuming Benito Jr. and his mother were at the scene of the crime on July 16, 1996. The failure of the defense to present the mother of Benito Jr. is thus fatal to appellant's cause. At any rate, crimes against chastity have been committed in many different places which may be considered as unlikely and that the scene of the crime is not always secluded for lust is no respecter of time and place. [46]

We now come to the correctness of the imposition of the death penalty on appellant for each of the two counts of rape. Under Section 11 of RA No. 7659,[47] the death penalty is imposed in rape cases where "the victim is under eighteen (18) years of age and the offender is a parent of the victim." The minority of the victim and her relationship to the offender are in the nature of special qualifying circumstances that raise the penalty to death.[48] Thus, these qualifying circumstances must be specifically alleged and duly proven with certainty.[49]

In these two cases before us, the Informations alleged that Remily was 13 years old and is the daughter of appellant. Remily's relationship with appellant was duly proven by the testimonies of prosecution witnesses, namely, Remily[50] and her mother, Emily, [51] and by defense witnesses, Benito Sr.[52] and Benito Jr.[53] However, the prosecution failed to prove Remily's actual age at the time of the rapes. Death is a penalty so extreme that in recent incestuous rape cases,[54] we have strictly and meticulously scrutinized the qualifying circumstances, particularly the minority of the complainant. The minority of the victim must be proved with equal certainty and clearness as the crime itself.[55]

In *People vs. Gonzales*,[56] the Information alleged that the complainant was 11 years old at the time of the commission of the rape. Other than the complainant's testimony, no other proof was ever presented to prove her age. Her testimony was not corroborated by her mother or any other close relative. No other evidence such as her certificate of live birth or baptismal certificate or school records was ever presented at the trial. The Court ruled that while the testimony of a rape victim is admissible as evidence of family tradition, it however could not, by itself be considered proof of age beyond reasonable doubt. Faced with the uncertainty as to the complainant's age, the Court did not impose the death penalty. Appellant was convicted only of simple, not qualified, rape.

Here, the complainant, Remily, is alleged to be 13 years old. No birth certificate, baptismal certificate or school record was presented during the trial to prove Remily's minority. In ruling that Remily was a minor, the trial court merely relied on the testimonies of Remily and her mother, Emily. Thus, Remily testified:

"Q: By the way, how old are you?

A: Thirteen (13), sir."[57]

On the other hand, the prosecution questioned Emily, the mother of Remily, in this manner:

"Q: How did you reconcile with your husband?

A: Because of my children, sir. They were insisting that I live once again with their father.

Q: And who are these children of yours?

A: Narciso Tamsi, Remily Tamsi and Glenda Tamsi, sir.

Q: And how old is your eldest son?

A: He is now 15, sir. One is 13, and the other one is six years old.”[58]

These testimonies do not prove beyond reasonable doubt that Remily was a minor at the time of the rapes because the testimonies do not show when Remily was actually born. Remily’s mother even failed to specify Remily’s age. The testimony of Remily’s mother could have been sufficient corroborative proof of Remily’s minority. However, the failure of Remily’s mother to state Remily’s date of birth does not help in settling the doubt regarding Remily’s actual age. The prosecution should have exercised more circumspection when it opted to prove Remily’s minority through testimonial evidence.

Remily alleged that she was 13 years old at the time she was raped in April and July, and yet at the time she testified a year later, she claimed she was still 13 years old. This fact raises further doubt on Remily’s actual age.[59] The prosecution could have easily remedied the situation by presenting as evidence the birth certificate of Remily or any other acceptable document showing her date of birth. However, the prosecution chose to rely only on testimonial evidence that just fails to prove with certainty and clearness Remily’s minority.

Even if the defense did not challenge the prosecution’s claim that Remily is a minor, we cannot resort to conjecture when appellant’s life hangs in the balance. It is only in cases where the complainant is 10 years old and below that the presentation of extrinsic proof of age can be dispensed with because the Court can take judicial notice of the complainant’s minority. [60] Judicial notice is possible in such cases because of the manifest minority of the complainant.[61] The doubt as to Remily’s minority must be resolved in appellant’s favor. The proper penalty therefore is reclusion perpetua for each count of rape, not death.

With the reduction of the penalties for both counts of rape, the award of indemnity must be accordingly modified. The amount of P75,000.00 in each civil indemnity should correspondingly be reduced to P50,000.00, an amount that is in line with current rulings. On the other hand, the award of P50,000.00 as moral damages, for each count of rape, is affirmed. Moral damages are automatically granted in rape cases, separate and distinct from the civil indemnity.[62] We further award P25,000.00 as exemplary damages for each count to deter fathers with aberrant sexual behaviors from sexually abusing their daughters.[63] What makes the rapes in these cases more sordid is that appellant had no compunction in raping his own daughter. The very first time appellant raped his daughter, he timed it to coincide with his birthday. Appellant was not deterred from raping his daughter the second time around even when the child was already down with chicken pox.

WHEREFORE, based on the foregoing, the decision of the Regional Trial Court of Bataan, Branch 4, in Criminal Cases Nos. ML-1097 and ML-1098 is **AFFIRMED** with **MODIFICATION**. Appellant **RENATO A. TAMSI** is sentenced in each of the criminal cases subject of this review to suffer the penalty of reclusion perpetua and to pay the victim, Remily Tamsi, the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages and the further sum of P25,000.00 as exemplary damages and costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Austria-Martinez, Corona, Carpio-Morales, and Callejo, Sr., JJ., concur.

Sandoval-Gutierrez, J., on leave.

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- [1] Penned by Judge Erlinda Casaus-Diccion.
- [2] July 16, 1996 for Criminal Case No. ML-1097; April 19, 1996 for Criminal Case No. ML-1098.
- [3] Records of Criminal Case No. ML-1097, p. 1 and Criminal Case No. ML-1098, p.1.
- [4] Ibid., pp. 9 and 7 respectively.
- [5] Rollo, pp. 107-110.
- [6] Ibid., pp. 66-67.
- [7] Now Articles 266-A and 266-B of the Revised Penal Code pursuant to RA No. 8353.
- [8] Ibid., p. 45.
- [9] Ibid., p. 62.
- [10] Rollo, p. 68, citing *People vs. Apongan*, 270 SCRA 713 (1997).
- [11] Ibid., pp. 68-70.
- [12] Ibid., p. 43.
- [13] Ibid., pp. 70-74.
- [14] *People vs. Campuhan*, 329 SCRA 270 (2000).
- [15] Ibid.
- [16] Ibid.
- [17] TSN, January 7, 1997, pp. 45-48.
- [18] A traditional long-bladed Philippine knife (Chambers Dictionary, 1999 Microsoft Bookshelf).
- [19] TSN, January 8, 1997, p. 100.
- [20] TSN, January 7, 1997, p. 52.
- [21] Ibid.
- [22] Ibid.
- [23] Records of Criminal Case No. ML-1097, p. 5.
- [24] TSN, January 22, 1997, p. 125.
- [25] *People vs. Brandares*, 311 SCRA 159 (1999).
- [26] This was the law in force at the time the rapes were committed. RA No. 7659 was amended on October 22, 1997 by RA No. 8353 (Anti-Rape Law of 1997).
- [27] *People vs. Sevilla*, 320 SCRA 107 (1999).
- [28] *People vs. Mangat*, 310 SCRA 101 (1999).
- [29] TSN, January 8, 1997, p. 96.

[30] Ibid., p. 97.

[31] Ibid., p. 98.

[32] Ibid.

[33] People vs. Mangat, supra.

[34] Ibid.

[35] People vs. Ravanos, 284 SCRA 634 (1998).

[36] Ibid.

[37] TSN, July 29, 1997, pp. 243-245.

[38] Ibid., p. 245.

[39] People vs. Sumalpong, 284 SCRA 464 (1998).

[40] TSN, March 25, 1997, pp. 208-209.

[41] People vs. Maceda, G.R. No. 138805, February 28, 2001.

[42] TSN, April 22, 1998, pp. 330-331.

[43] Ibid., p. 333.

[44] Ibid., pp. 333-334.

[45] Section 2 of Rule 129 of the Rules of Court:

“SEC. 2. Judicial Notice, when discretionary.—A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration , or ought to be known to judges because of their judicial functions.”

[46] People vs. Sandico, 307 SCRA 204 (1999).

[47] RA No. 7659 took effect on December 31, 1993 and was amended by RA No. 8353 on October 22, 1997.

[48] People vs. Sugano, 310 SCRA 728 (1999).

[49] Ibid.

[50] TSN, January 7, 1997, p. 42.

[51] TSN, January 22, 1997, p. 134.

[52] TSN, October 7, 1997, pp. 285-286.

[53] TSN, April 22, 1998.

[54] People vs. Virrey, G.R. No. 133910, November 14, 2001; People vs. Brigildo, 323 SCRA 631(2000); People v. Tipay, 329 SCRA 52 (2000); and People vs. Cula, 329 SCRA 101 (2000).

[55] People vs. Javier, 311 SCRA 122 (1999).

[56] G.R. No. 140676, July 31, 2002.

[57] TSN, January 7, 1997, p. 48.

[58] TSN, January 22, 1997, p. 146.

[59] See *People vs. Brigildo*, *supra*.

[60] *People vs. Jacob*, G.R. Nos. 138576-77, July 13, 2001.

[61] *People vs. Rivera*, G.R. No. 139180, July 31, 2001 and *People vs. Abaño*, G.R. No. 142728, January 23, 2002.

[62] *People vs. Garigadi*, 317 SCRA 399 (1999).

[63] *People vs. Olarte*, G.R. Nos. 129530-31, September 24, 2001.

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