

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CHARMIE SERVANO Y GAOR, APPELLANT.

G.R. Nos. 143002-03. July 17, 2003

Ponente: CORONA, J.

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CORONA, J.:

For automatic review is the joint decision[1] of Branch 30 of the Regional Trial Court of the Fifth Judicial Region stationed in San Jose Camarines Sur, finding appellant guilty beyond reasonable doubt of two counts of rape and imposing upon him the death penalty in each case.

Two separate informations were filed against appellant Charmie Servano charging him with two counts of rape both committed on June 13, 1998 against his daughter, AAA. The first information alleged:

Criminal Case No. T-1904

That on or about the 13[th] day of June, 1998 at around 9:00 o'clock in the morning at Barangay xxxxx , Municipality of Lagonoy, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threats and intimidation did then and there, wilfully, unlawfully and feloniously have carnal knowledge with his daughter, AAA, a 12 year old girl, against her will, to her damage and prejudice.

Acts Contrary to Law.

The other information (Criminal Case No. T-1905) was identically worded except for the time of the commission of the offense.[2]

Upon arraignment, the appellant, assisted by his counsel, pleaded not guilty to both charges.

Considering that the parties were the same in both cases and the incidents which gave rise thereto occurred on the same date, joint trial on the merits was conducted by the trial court.

The prosecution presented three witnesses: private complainant AAA, Dr. Roberto Enriquez and Barangay Chairman Jose Barro. It rested its case with the admission of its Exhibits "A" to "E" with submarkings for both cases. On the other hand, the defense presented the appellant, Charmie Servano, as its lone witness and rested its case without any documentary evidence.

Private complainant AAA is the only daughter of appellant with his common-law wife xxxxx . On June 13, 1998, at about 7:00 a.m., AAA was alone in their house in xxxxx , Lagonoy, Camarines Sur, when her father, herein appellant, sexually assaulted her. He inserted his penis, although with some difficulty, into her vagina and pushed it in as she was lying down on her back. Thereafter, appellant left her alone. Meanwhile, AAA cooked rice and washed clothes. Around two hours later, appellant returned home and sexually assaulted her again. He went on top of AAA and inserted his penis into his daughter's vagina. He then left for work. AAA then left their house right after that to inform her half-sister xxxxx of what their father had just done. The angry half-sisters proceeded

to their Aunt xxxx to apprise her of the incident.

On June 14, 1998, xxxxx reported the matter to Barangay Captain Jose Barro of xxxxx. The offense being grave, the barangay captain instructed a tanod to invite appellant for interrogation. Thereafter, appellant was brought to the police station in Garchitorea. He was later transferred to the police station in Lagonoy, Camarines Sur. AAA executed her sworn statement[3] on June 17, 1998 at Lagonoy police station. On the same date, she was examined by Dr. Jose Roberto Enriquez who issued a medical certificate[4] which showed that AAA suffered hymenal lacerations at 3, 9 and 12 o'clock positions which were possibly inflicted only about four to ten days earlier.

The defense, on the other hand, presented the appellant as its sole witness. He testified that he came down from the mountain at 10:00 a.m. on June 12, 1998 to attend a dance party in their barangay that evening. From 8:00 p.m. on June 12, 1998 until 4:00 a.m. the following day, he partook of some drinks with friends. After returning home, he lay down to rest. Later on, he felt a hand on his forehead. He pulled it towards him and, thinking that it was the hand of his paramour, he touched her organ and inserted his finger. He came to his senses when he heard his name called. Stunned, he got up and realized that it was his daughter AAA. He asked AAA's forgiveness but AAA rejected him and instead filed the complaints against him.

On February 28, 2000, the trial court rendered its decision as follows:

WHEREFORE:

In Criminal Case No. T-1904, the accused Charmie Servano y Gaor is hereby sentenced to suffer the supreme penalty of death, to indemnify the private complainant AAA [his] daughter, the sum of Seventy Five Thousand Pesos (P75,000.00) and the sum of Twenty Five Thousand Pesos (P25,000.00) as moral damages, both of Philippine Currency, and for him to pay the costs.

In Criminal Case No. T-1905, the accused Charmie Servano y Gaor is hereby sentenced to suffer the supreme penalty of death to indemnify private complainant AAA, [his] daughter the sum of Seventy Five Thousand Pesos (P75,000.00) and the sum of Twenty Five Thousand Pesos (P25,000.00) as moral damages, both of Philippine Currency, and for him to pay the costs.

Pursuant to Article 47, RPC, as amended, let the whole original records of these two (2) cases be forwarded to the Honorable Supreme Court, for automatic review.[5]

In his brief[6] before this Court, the appellant raises a lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.

In essence, appellant assails the credibility of the private complainant whose behavior, according to him, was not consistent with that of a rape victim's. He theorizes that private complainant would not have nonchalantly stayed at home to cook rice and wash clothes if indeed she had been raped. Likewise, the medical certificate did not show any spermatozoa in AAA's private part while the healed hymenal lacerations in her vagina, per se, did not prove sexual intercourse. Appellant insists that he merely touched his daughter's private part on the mistaken assumption that he was doing it to his paramour. Upon realizing his mistake, appellant immediately desisted and even asked for forgiveness.

Appellant's obvious pretense cannot prevail over the testimony of private complainant which the trial court found to be "categorical, straightforward, detailed and consistent." When the offended party is a young and immature girl, courts are inclined to lend credence to their version of what transpired, not only because of their relative vulnerability but also because of the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified were not true.[7] More so when, as here, the private complainant was

appellant's own daughter. Generally, no young woman will accuse her own father of so grave a crime as rape unless she has truly been aggrieved.[8] Besides, we note that private complainant could not hold back her emotions and cried profusely at a certain point during the trial.[9] It is a matter of judicial cognizance that the spontaneous crying of the victim during her testimony is evidence that speaks well of her credibility.[10]

She testified:

Q:

While you were at your house at Barangay xxxxx, Lagonoy, Camarines Sur on June 13, 1998, xxx about 7:00 o'clock in the morning, tell us if there was an unusual incident that took place.

A: There was, sir.

Q: Tell us what that was?

A: I was abused by my father.

Q: When you say you were abused, tell us what exactly do you mean by that?

A: He raped me, sir.

Q: When you said you were raped, what do you mean by that?

A: He `what' my organ.

FISCAL SOLANO:

May we translate the answer of the witness. Our translation, he made something in my vagina.

ATTY. BRIONES:

That is not proper, that is very leading.

FISCAL SOLANO:

When she said `inano niya an sakong ari' translated into English, he made something in my vagina.

ATTY. BRIONES:

Very leading.

COURT:

What do you mean by `ari'?

A: The organ of my father was inserted in my organ.

ATTY. BRIONES:

Again may it be put on record that the answer of the witness `pinapasok' is a tagalog term.

COURT:

What organ of your father?

A: His penis was inserted in my vagina.

FISCAL SOLANO:

When the penis of your father was inserted inside your vagina, tell us what you felt?

A: Painful, sir.

COURT:

How do you know that it was inserted?

A: It was painful and he inserted it.

Q: How did he insert it?

A: He was pushing it in.

Q Where?

A: In the hole of my vagina.

ATTY. BRIONES - The witness stated the term `butas' which is a Tagalog term, not in Bicol, meaning hole.

FISCAL SOLANO - Tell us Miss Witness what was your position when your father inserted his penis inside your vagina?

A: I was lying on my back, sir.

Q: Where were you at that time?

A: In the room where he sleeps.

Q:

Now, what was also the position of your father when he inserted his penis inside your vagina as you said you were lying down?

A: He was on top of me, sir.

Q:

On June 13, 1998 at 7:00 o'clock in the morning, who were the persons inside the house beside yourself and your father, tell us?

A: None, sir, except the two of us.

xxx xxx xxx

FISCAL SOLANO:

After the insertion of your father as you already well related to the Honorable Court on June 13, 1998 at 7:00 o'clock in the morning, where did your father go?

A: He went to the barrio to work.

Q: And after your father left, what did you do also, if any?

A: He went to the barrio to work.

Q: And after your father left, what did you do also, if any?

A: I cooked rice in our house and washed the clothes.

Q: After cooking rice and washing the clothes, what did you do if any?

A: No more, sir.

Q: And what time did your father return on the same date?

A: 9:00 o'clock, sir.

Q: And after your father arrived home, what happened if any, again?

A: He did a bad thing again to me.

Q: What was that bad thing that was done to you by your father?

A: He did again what he had done to me at 7:00 o'clock.

Q:

Tell us again what did your father do when you said he repeated the same thing he did at 7:00 o'clock, what was that?

A: He again inserted his organ in my organ.

ATTY. BRIONES:

Again the answer of the witness is in perfect Tagalog, 'Pinapasok niya ang kanyang ari sa aking ari.'

FISCAL SOLANO:

What is that organ you are referring to?

A: He inserted his penis.

Q: Where?

A: In the hole of my vagina.

Q: And what did you feel when as you said your father inserted again his penis inside your vagina?

A: Pain, sir.[11]

While it may be true that complainant failed to categorically declare in her testimony that appellant employed force, threat or intimidation upon her, the records, however, provide sufficient proof that force and intimidation indeed attended both acts of rape. During the trial, the prosecution produced in evidence the sworn statement[12] executed and signed by the private complainant, AAA, on June 17, 1998 before SPO2 Claudio B. Esmeralda, Jr. of the Lagonoy PNP Station in Camarines Sur. The sworn statement read in part:

4. Q. When and where that incidents you are referring to happened?

A.

Last June 13, 1998 in the morning at about 7:00 o'clock and 9:00 o'clock inside our residence at xxxxx , Lagonoy, Camarines, Sur.

5. Q. Who was with you when these incidents happened?

A. I was alone, sir.

6. Q. Did you resist when your father sexually abused you for two times?

A. No, sir.

7. Q. Did you shout for help so that someone may help you?

A. No, sir because of fear that he might harm me.

8. Q. Will you narrate to us in details how these incidents happened?

A.

That on or about 7:00 a.m. of June 13, 1998 while I was sitting on the floor of our house at xxxxx , this municipality, my father Charmie Servano suddenly cuddled (kinolkol) me then forcibly brought me to our room's hose (sic) then took off my panty and dress then pushed me towards the mat afterwhich he took off his short pant and underwear then put his body on top of mine and forcibly inserted his erected penis inside my vagina.

9. Q. What did you feel when your father's penis entered in your vagina?

A. I felt great pain, sir.

10. Q. After your father succeeded his lust (sic), what did you do if any?

A. I fixed myself and cooked rice for our breakfast.

11. Q. After that what happened next, if any?

A.

After cooking I ate my breakfast while my father left by going somewhere and when he returned back home at about 9:00 a.m. of that same date he again raped me.

12. Q. After your father raped you for the second time what did your father do?

A. He went out of the house and proceeded to our barangay proper.

13. Q. How about you, did you do something?

A. I went to the house of my Ate Maileen Servano and told her what our father did to me.

(emphasis supplied)

xxx xxx xxx

From the foregoing, it is clear that private complainant was alone in their house when appellant suddenly cuddled (kinolkol) her. He forcibly brought private complainant inside the room where appellant undressed her before pushing her to the mat. After undressing himself, appellant mounted private complainant and finally consummated his lust. He was apparently so gratified by his sexual perversion that, after leaving their house for a while, appellant returned to rape his hapless daughter again. In both instances, private complainant could not resist appellant's unwelcome and detestable sexual advances for fear that he might hurt her even more after having been forcibly brought inside the room and pushed to the mat to be raped.

It should also be stressed that this sworn statement was identified by complainant in open court and was, in fact, offered as evidence by the prosecution as Exhibits D, D-1, and D-2. In the direct examination of the complainant, the prosecutor asked her if she made them. She was asked to confirm the truth thereof. The trial court allowed this without any objection from the defense. Complainant thus affirmed the veracity and truthfulness of all the statements appearing therein. Further, when the prosecution made its offer of documentary evidence, the trial court admitted the same sworn statement as part of the prosecution evidence.[13]

Evidence in criminal cases is not limited to the declarations made in open court; it includes all documents, affidavits or sworn statements of the witnesses, and other supporting evidence. It comprehends something more

than just the mere testimony of a witness.[14] Thus, when a sworn statement has been formally offered as evidence, it forms an integral part of the prosecution evidence which should not be ignored for it complements and completes the testimony on the witness stand. A sworn statement is a written declaration of facts to which the declarant has sworn before an officer authorized to administer oaths. This oath vests credibility and trustworthiness on the document. The fact that a witness fails to reiterate, during trial, the contents of his sworn statement should not affect his credibility and render the sworn statement useless and insignificant, as long as it is presented as evidence in open court. This is not to say, however, that the sworn statement should be given more probative value than the actual testimony. Rather, the sworn statement and the open court declarations must be evaluated and examined together in toto so that a full and thorough determination of the merits of the case may be achieved. Giving weight to a witness' oral testimony during the trial should not mean being oblivious to the other pieces of available evidence such as the sworn statement. In like manner, the court cannot give probative value to the sworn statement to the exclusion of the oral testimony. In every case, the court should review, assess and weigh the totality of the evidence presented by the parties. It should not confine itself to oral testimony during trial. In the instant case, the sworn statement of complainant contained a detailed account of the two rape incidents which made it as convincing and as persuasive as her testimony.

It is likewise true that the prosecutor in this case was not able to propound questions concerning the details of the sexual assault, particularly on the use of force and intimidation by appellant. But this should not preclude resort to complainant's sworn statement in order to provide the missing details for the reason that the said sworn statement was part of the testimony of complainant AAA and it constituted relevant and competent evidence for the prosecution. Likewise, although the testimony of complainant failed to state that the sexual act was done through force and intimidation, she, however, never declared either that appellant did not employ force and intimidation on her. Thus, she never contradicted the recitals in her sworn statement. She was merely unable to recite the exact contents of the sworn statement, specifically the fact of force and intimidation because, as earlier mentioned, the prosecutor failed to focus on this specific detail. Moreover, complainant could not be expected, on account of her young age and lack of experience, to be precise in her testimony. The rule that an affidavit or sworn statement is inferior to testimony in open court applies only when there are discrepancies and inconsistencies between the allegations in the sworn statement and those made on the witness stand. No such conflict or contradiction exists in the instant case. Hence, the narration made in complainant's sworn statement should not be at all disregarded.

It has been indubitably shown in this case that appellant used force and intimidation on his daughter and this effectively cowed her to submission. Such submissive attitude could be explained by private complainant's misfortune of growing up without a mother who abandoned her from infancy. Hence, at 44, the appellant wielded complete control and authority over his daughter. She was all alone in the house on the two occasions of rape. No directly threatening words were necessary because appellant's commanding presence and bullying behavior were too intimidating for a child like her to resist. Undoubtedly, complainant's tender age and appellant's custodial control and domination over her rendered complainant subservient to her father's lechery. Indeed, it is difficult to believe that, given a choice, a daughter will willingly submit to the sexual perversity of her father.

Fear, being a state of mind, is necessarily subjective. Its determination depends on the peculiar circumstances affecting the parties in every case. Complainant's fear was particularly evident in this case. According to the social case study report[15] conducted by the Department of Social Welfare and Development (DSWD) of Sorsogon, complainant was withdrawn and looked scared. It was also shown that complainant suffered tremendous physical beatings and abuses in the hands of appellant even before the alleged rape incidents happened. Appellant would inhumanely punish complainant for the small mistakes she committed. To say that complainant was afraid of her father would be an understatement, for the truth was, she dreaded him. This fear was enough for complainant to believe that, if she did not yield to the bestial demands of her father, something would happen to her at that

moment or thereafter. She did not have to be intimidated in so many words and actions right at that moment in order to make her submit to his sexual desires. There was an unmistakable "learned helplessness" on the victim's part. The cumulative effects of the fear and intimidation instilled in the minds of victims of incestuous rapes cannot be tested by any hard and fast rule. They must be viewed in the light of the victim's perception and judgment not only at the time of the commission of the crime but also at the time immediately after.[16]

Granted that the prosecution failed to prove that appellant employed force and intimidation upon his daughter, appellant's conviction by the trial court for the crime of rape is nevertheless affirmable. We have to bear in mind that, in incest rape, the minor victim is at a great disadvantage because the assailant, by his overpowering and overbearing moral influence, can easily consummate his bestial lust with impunity. As a consequence, proof of force and violence is unnecessary unlike where the accused is not an ascendant or blood relative of the victim. Thus, the failure of the victim to explicitly verbalize, as in this case, the use of force, threat, or intimidation by the accused should not adversely affect the case of the prosecution as long as there is adequate proof that sexual intercourse did take place. Here lies the wisdom of the principle first articulated in *People vs. Erardo*[17] and affirmed in *People vs. Miranda*[18] where this Court emphatically held that:

Indeed, in cases of incestuous rape, the accused-appellant's moral ascendancy over the victim takes the place of the force and intimidation in rape. The force and intimidation is subjective and should be viewed in the context of the victim's perception and judgment at that time of the commission of the offense. xxxxx testified that she submitted herself to the father because she was afraid that he might hurt her. She noticed that her father was drunk, knowing that he had a drinking spree in their house at that time. No words of threat were necessary because her father's presence and moral ascendancy was intimidating enough for xxxxx not to resist his advances. The fact that xxxxx failed to put up a strong resistance or shout for help cannot be considered consent. xxx In Philippine society, the father is considered the head of the family, and the children are taught not to defy the father's authority even when this is abused. They are taught to respect the sanctity of marriage and to value the family above everything else. Hence, when the abuse begins, the victim sees no reason or need to question the righteousness of the father whom she has trusted right from the start. The value of respect and obedience to parents instilled among Filipino children is transferred into the very same value that exposes them to risks of exploitation by their own parents. The sexual relationship could begin so subtly that the child does not realize that it is abnormal. Physical force then becomes unnecessary. The perpetrator takes full advantage of this blood relationship. Most daughters cooperate and this is one reason why they suffer tremendous guilt later on. It is almost impossible for a daughter to reject her father's advances, for children seldom question what grown-ups tell them to do.

The above pronouncement was also lucidly explained in the leading case of *People vs. Pagdayawon*[19]:

In a rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter substitute for violence and intimidation. That ascendancy or influence necessarily flows from the father's parental authority, which the Constitution and the laws recognize, support and enhance, as well as from the children's duty to obey and observe reverence and respect towards their parents. Such reverence and respect are deeply ingrained in the minds of Filipino children and are recognized by law. Abuse of both by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants.

Indeed, as between a father and his daughter in incestuous sexual assault, this Court has unqualifiedly upheld the view that the former's moral ascendancy and influence over the latter sufficiently substitute for force and intimidation. Appellant's moral ascendancy over the victim satisfies the elements of force and intimidation. Evidence of force and intimidation is therefore not even necessary to secure conviction of the appellant for the crime of rape.

Against the tremendous weight of evidence ranged against him, all appellant could do was put up a lame defense:

the two acts of rape could not have possibly happened because the private complainant remained at home to cook rice and wash his clothes. It should be emphasized that there is no standard form of behavior that is expected of rape victims right after they have been defiled because people react differently to emotional stress.[20] It is entirely possible for a rape victim to go through what psychologists describe as a "state of denial" which is a way of coping with the overwhelming emotional stress of an extremely shocking event. While in that state of denial, the victim refuses either to accept reality or to allow the occurrence to "sink in." If this happens, the accused should be the last person to take advantage of it in his defense.

In any event, appellant's claim about the victim's alleged nonchalance is not true at all. The records show that private complainant did not lose time in reporting her father's dastardly act to her half-sister when he left the house after the second rape. The fact that complainant immediately told her half-sister about her nightmarish experience, after which they hurriedly went to their aunt xxxxx to whom they angrily and emotionally reported the matter, leaves little doubt as to the truth or veracity of the charge of rape. Appellant himself admitted that complainant could not be appeased despite his apology. In fact, she was "unforgiving." Her spontaneous conduct was an eloquent attestation of her abhorrence and repugnance to her father's perversity.

Furthermore, the absence of spermatozoa is not a defense since the overriding consideration in rape cases is not the emission of semen but the unlawful penetration of the female genitalia by the male organ.[21] Moreover, while it is true that the victim's hymenal lacerations did not necessarily prove rape, it nevertheless acquired significance as corroborative evidence in the light of private complainant's accusation that she was sexually abused.

Appellant's claim that he merely touched the private part of his daughter on the mistaken assumption that she was his paramour, is totally beyond belief. As aptly observed by the trial court, appellant would not have committed the sexual act for the second time if his tale of mistaken identity had been true. Besides, how could he have mistaken his daughter for his paramour in broad daylight -- at 7:00 o'clock and 9:00 o'clock in the morning?

AAA bore no grudge against her father. She even admitted during the trial that she loved and trusted him until he raped her. It was thus absurd to accuse her own father of rape had it not been the truth.[22] Accordingly, justice demands that appellant be made to pay for his crimes.

The two informations alleged that the appellant committed the crimes of rape against his 12-year-old daughter. This Court has consistently ruled that the twin circumstances of minority and relationship are in the nature of qualifying circumstances which must be alleged in the information and proved during trial beyond reasonable doubt, otherwise, the accused should only be held liable for the crime of simple rape.[23]

That AAA was appellant's daughter was never in dispute. This was one of the admissions made by the appellant during the joint pre-trial of these cases where the parties were duly represented by their respective counsels.

To prove her age, the prosecution adduced in evidence what purported to be AAA's certificate of live birth.[24] However, this document was correctly disregarded by the trial court because, aside from its belated registration,[25] there were irregularities attendant to its preparation, such as the erroneous dates and names of certain persons appearing thereon. While complainant testified that she was born on January 7, 1986,[26] the date of birth on her birth certificate is August 4, 1986. Also, the middle initial of the private complainant herself was written erroneously as "F" instead of "C". The name of the appellant under the space for "informant" was merely superimposed on what appeared to be that of another person.

In the absence of any other competent evidence, such as the baptismal certificate, school records or the testimony of the victim's relatives, the testimony of the private complainant was not sufficient proof of her actual age

without an express and clear admission thereof by the appellant, pursuant to our ruling in *People vs. Pruna*.^[27] Since it was the prosecution that had the burden of proving the age of the offended party, the failure of the appellant to object to the testimonial evidence regarding the victim's age could not be taken against him. The prosecution failed to prove the actual age of the private complainant as alleged in the separate informations, thus the appellant should be convicted of simple rape and sentenced accordingly to reclusion perpetua in each case.

Jurisprudence dictates that, upon a finding of the fact of rape, the award of civil indemnity ex delicto in the amount of P50,000 becomes mandatory. In addition, the victim AAA is entitled to the amount of P50,000 as moral damages, without need of proof, and another P25,000 as exemplary damages for each count of rape, to set an example for the public good.^[28]

WHEREFORE, the judgment of the lower court is hereby AFFIRMED with the MODIFICATION that appellant Charmie Servano is found guilty of two counts of simple rape and is sentenced to suffer the penalty of reclusion perpetua for each count of rape. He is also ordered to pay for each count of rape the amount of (a) P50,000 as civil indemnity (b) P50,000 as moral damages and (c) P25,000 as exemplary damages.

SO ORDERED.

Puno, Panganiban, Ynares-Santiago, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Davide, Jr., C.J., joins Mr. Justice Vitug in his dissents.

Belosillo, J., see concurring opinion.

Vitug, J., see dissenting opinion.

Quisumbing and Sandoval-Gutierrez, JJ., on official leave.

[1] Penned by Judge Alfredo A. Cabral, Rollo, pp. 18-27.

[2] In Criminal Case No. T-1905, the information alleged that the crime was committed at around 7 a.m. of June 13, 1998.

[3] Exhibit "D".

[4] Exhibit "B".

[5] Rollo, pp. 26-27.

[6] Rollo, pp. 42-51.

[7] *People vs. Alipayo*, 324 SCRA 447 [2000].

[8] *People vs. Mangila*, 325 SCRA 586 [2000].

[9] TSN, March 16, 1999, p. 23.

[10] *People vs. Mitra*, 328 SCRA 774 [2000]; *People vs. Sancho*, 324 SCRA 646 [2000].

[11] TSN, March 16, 1999, pp. 10-16.

[12] See Note No.3.

[13] Record, p.143.

[14] Wharton's Criminal Evidence, 11th ed., sec. 3, p. 4.

[15] Exhibits C to C-6, Record, pp. 34-38.

[16] People vs. de los Santos, 295 SCRA 583 [1998].

[17] 127 SCRA 250 [1984].

[18] G.R. No. 142566, August 2, 2002.

[19] 351 SCRA 643 [2001].

[20] People vs. Lomerio, 326 SCRA 530 [2000].

[21] People vs. Bato, 3235 SCRA 671 [2000].

[22] People vs. Llamo, 323 SCRA 791 [2000].

[23] People vs. Reyes, 313 SCRA 563 [1999].

[24] Exhibit "A".

[25] Complainant's birth certificate was prepared only on June 11, 1998.

[26] TSN, March 16, 1999, p. 7.

[27] G.R. No. 138471, October 10, 2002.

[28] People vs. Solmoro, Jr., G.R. Nos. 139187-94, November 27, 2002.

DISSENTING OPINION

VITUG, J.:

For review by the Court is the joint decision[1] in Criminal Case No. T-1904 and Criminal Case No. T-1905 of the Regional Trial Court, Branch 30, of San Jose, Camarines Sur, finding herein appellant Charmie Servano y Gaor guilty beyond reasonable doubt of twice committing the crime of incestuous rape against his 12-year-old daughter, and imposing upon him, for each count, the extreme penalty of death and ordering the payment to the victim of seventy-five thousand pesos (P75,000.00) civil indemnity and twenty-five thousand pesos (P25,000.00) moral damages.

The two Informations that spawned the judgment under review, except for the time of the commission of each crime, are worded similarly. The Information in Criminal Case No. T-1905, charging appellant with violation of "Article 335 of the Revised Penal Code, as amended by Republic Act No. 8353," reads:

"That on or about the 13[th] day of June, 1998, at around 7:00 o'clock in the morning at Barangay xxxxx , Municipality of Lagonoy, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his daughter, AAA, a 12-year old girl against her will, to her damage and prejudice." [2]

The other Information, in Criminal Case No. T-1904, covers a similar infraction by appellant committed about two hours later on the same day of 13 June 1998.

At his arraignment, appellant, assisted by counsel, pleaded not guilty to the charges.

AAA, said to have been born on 7 January 1986, is the only daughter of appellant with his common-law wife xxxxx . Appellant has an older daughter, xxxxx , by another woman.

On 13 June 1998, about seven o'clock in the morning, AAA was at their house in xxxxx , Lagonoy, Camarines Sur, when her father, herein appellant, sexually assaulted her. He inserted his penis, although with some difficulty, into her vagina and pushed it in as she was lying down on her back. Shortly after appellant had left her alone, AAA cooked rice and washed clothes. Around two hours later, appellant came back home. Once again, he went on top of AAA and inserted his penis into his daughter's vagina. Then, he left for work. AAA herself left their house to see her sister xxxxx and to tell her what their father had just done. The angry half-sisters went in a huff to their Aunt xxxxx to apprise her of the incident. The following morning of 14 June 1998, xxxxx reported the matter to Barangay Captain Jose Barro of xxxxx . The offense being grave, the barangay captain instructed a tanod to invite appellant for questioning. With a member of the "CAFGU," the tanod brought appellant to the police station at Garchitorena; appellant was later transferred to the police station in Lagonoy. Later, xxxxx and the two sisters went to AAA's grandparents, Jose and Dioleta Servano, to also inform them of what had transpired. On 17 June 1998, AAA was examined by Dr. Jose Roberto Enriquez, a government physician in Lagonoy, who, after conducting the physical examination, issued a Medical Report[3] to the effect that AAA's hymen was lacerated at the "3, 9 and 12 o'clock" positions. Dr. Enriquez explained that he used the word "recent" in the report because the lacerations, which were healing at the time of examination, had likely been inflicted only about four to ten days prior to the examination.[4]

The defense presented appellant, its sole witness, who claimed that he came down from the mountain at ten o'clock on the morning of 12 June 1998, in time for a dance party in the barangay. Starting at eight o'clock on the evening of 12 June 1998 up until four o'clock the following morning, he was partaking of some drinks with friends. Upon returning home, he lay down to rest. Momentarily, he felt a hand on his forehead. He pulled it towards him and, thinking that it was the hand of his paramour, he "held" her organ and "inserted" his finger there. He came to his senses when he heard his name called. Stunned, he got up and realized that it was his daughter AAA. He asked AAA's dispensation for what had happened and for mistaking her for someone else, but she was unforgiving.

The trial court convicted appellant guilty on two counts of rape and imposed on him the penalty of death for each count. It found the testimony of AAA to be "categorical, straight-forward, detailed, and consistent." Describing the girl to be "guileless," the trial court judge expressed that nothing appeared to him to indicate that her testimony had been fabricated.[5]

I also see no reason to conclude otherwise. Indeed, when the offended party is a young and immature girl, a court would be inclined, considering the relative vulnerability and the shame and embarrassment to which she would otherwise be exposed, to lend credence to her version of a sexual assault.

Article 335 (now Article 266-A) of the Revised Penal Code, as amended by Republic Act No. 8353, the felony with which appellant has been charged provides:

"Article 266-A. Rape; When and How Committed. - Rape is committed -

"1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

"a) Through force, threat, or intimidation;

"b) When the offended party is deprived of reason or otherwise unconscious;

"c) By means of fraudulent machination or grave abuse of authority; and

"d)

When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

"2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person."

Article 266-B of the law prescribes the penalty of reclusion perpetua. When, however, the victim is "under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim," the law ordains that the death penalty shall be imposed.

The evidence would adequately show that appellant, the father of the victim, had carnal knowledge of his own daughter. Whether or not appellant could be convicted of rape, given the two Informations filed against him and the circumstances of the case, would depend on either of two possibilities, i.e., that the victim was under twelve years of age at the time of commission of the offenses or that the carnal knowledge was through force, threat or intimidation.

At the trial, AAA said that her grandmother had told her that she was born on 07 January 1986, which meant that on the date of the commission of the two offenses charged, AAA was already twelve (12) years old, five (5) months and six (6) days. The court a quo did not rely on the birth certificate of the victim, Exhibit A, which showed that AAA was born on 04 August 1986 and thus only eleven (11) years, ten (10) months, and nine (9) days on the date the questioned incidents took place. The trial court was not without a valid ground for discounting the birth certificate which showed that on 11 June 1998 (or just two days before the rape incidents were said to have been committed) Rene V. Gavarra, a day care worker, belatedly prepared the Certificate of Live Birth of one "Aileen F. Servano" born on 04 August 1986 in xxxxx, Lagonoy, to "xxxxx " and "Charmie Servano." Under the space for "informant," the typewritten name "Charmie Servano" was superimposed on an erased name with the surname "Castillo" still visible. Servano affixed his signature above his name apparently also on 11 June 1998. At the back portion of the same certificate, the pro forma Affidavit of Acknowledgement/Admission of Paternity would appear to have been filled up and signed on 22 June 1998 (or nine days after the rape incidents were said to have been committed) by Charmie Servano before the Municipal Civil Registrar of Lagonoy. The trial court thus correctly ignored the document.

Most importantly, in order to convict appellant for statutory rape, it would not be sufficient to aver in the information that the victim was twelve (12) years old; the information must instead explicitly state that the victim was under or below twelve (12) years of age, at the time of commission of the offense. The trial court appropriately ruled that, since private complainant was already at least twelve (12) years of age at the time she was violated, not only must the sexual intercourse be proven but it should also be shown that force, violence or intimidation was employed by the accused against the complainant to commit the sexual offense.

The gravamen of the offense of rape is sexual congress with a woman^[6] by force, threat or intimidation.^[7] If rape is through the use of force, violence or intimidation, it should be self-evident that it can only be committed against or without the consent of the victim.^[8] It is noteworthy that Republic Act No. 8353 requires at least some kind of physical overt act to manifest resistance, as well as its proof, that would indicate such lack of consent, viz:

"Article 266-D. Presumptions - Any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence in the prosecution of acts punished under Article 266-A."

If the woman is under twelve years of age, proof of force, threat or intimidation becomes immaterial not only because vitiation of consent is not an element of statutory rape but also because the victim is, in effect, presumed by law to be incapable of free consent. If, however, the woman is twelve years of age or over at the time she is violated, it must be established that, along with proof of sexual intercourse, the sexual act is done through force, violence, intimidation or threat.[9]

In one case[10] involving a charge of rape committed against a thirteen-year old girl, the complainant, the Court noted, merely testified that the accused had "raped" her, without going into details or explaining what exactly was done to her. The Court held that the testimony given was not evidence but a conclusion, the proof of which was the very purpose of the trial. It expounded:

"Whether or not he [accused] raped her is the fact in issue which the court must determine based on the evidence offered. Testimony to that effect is not evidence, but simply a conclusion, the proof of which is the very purpose of the trial. It is not competent for a witness to express an opinion, conclusion or judgment thereon." [11]

Likewise, in the case of *People vs. Supnad*, [12] citing *People vs. De Leon* [13] and *People vs. Garcia*, [14] the Court acquitted the accused on three counts of rape perpetrated against his twelve year old niece on the ground that private complainant's "simple assertion that her uncle had sexual intercourse with her twice in February and once in March is clearly inadequate and grossly insufficient to establish the guilt of the accused-appellant." The Court found her testimony to be "too general as it failed to focus on material details." [15]

But could not the missing proof be aptly supplied by an affidavit or an extrajudicial sworn statement of the witness?

In most jurisdictions, a sworn statement in criminal investigations is taken by police authorities over the incident complained of. In its usual "question and answer" form, the statement would contain an affiant's responses to the matters asked. Not too infrequently, the statements are held to be either incomplete or inaccurate, sometimes from the manner inquiries are made and sometimes from partial suggestions deliberately or casually made. [16] And while it remains admissible as evidence when so identified and confirmed, its probative value, however, can hardly be equated to an open court declaration. [17]

Section 1, Rule 132, of the Rules of Court provides that the "examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation," and that, unless "the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally." The reason for the requirement obviously is to enable the court to judge the credibility of the witness by the manner he testifies, by his intelligence, and by his appearance. [18] It is unquestionably the safest and most satisfactory method of investigating facts, and affords the greatest protection to the rights of the individual. [19] Section 1, Rule 133, of the Rules of Court requires that in determining the preponderance or superior weight of evidence on the issues involved, the court may, among other things, consider the "witnesses' manner of testifying" which can only be done if the witnesses give their testimony orally and in open court.

A sworn statement is not a substitute for testimony given at and during the trial. The demeanor of a witness at the stand and in responding to questions is a matter that can prove to be invaluable in determining the credibility of the witness. The trial court must have the full opportunity to observe the behavior of the witness in all the declarations that can be significant to the case, its outcome and in decreeing judgment. It is not enough that the affiant broadly confirms the contents of the extrajudicial statement. Wigmore, an eminent authority on the rules on evidence, has said: "No one has ever doubted that the former testimony of a witness cannot be used if the witness is still available for the purpose of testifying at the present trial." [20] Truly, it is well-entrenched that the

findings of the trial court bear great weight because of the vantage point it enjoys in scrutinizing the deportment of the affiant-witness; each twitch of the witnesses' muscle, the blink of the eyes, the sweating palms, or the rise and fall of the voice, as well as the varied change in behavior, could well spell the difference between truth and falsehood, and determine whether the witness can be relied on or not.[21]

In *People v. Estenzo*,[22] a petition for certiorari and prohibition was filed to nullify the order of respondent judge sustaining the procedure proposed by defense counsel that, in lieu of the testimony of the witnesses for the accused on direct examination in open court, he would file their affidavits, subject to cross-examination by the prosecution. The Court nullified the subject order, explaining thusly:

"The main and essential purpose of requiring a witness to appear and testify orally at a trial is to secure for the adverse party the opportunity of cross-examination. 'The opponent demands confrontation, not for the idle purpose of gazing upon the witness, or being gazed upon him, but for the purpose of cross-examination which cannot be had except by the direct and personal putting of questions and obtaining immediate answers.' (5 Wigmore on Evidence, Section 1395, p.123.). There is also the advantage to be obtained by the personal appearance of the witness before the judge, and it is this - it enables the judge as the trier of facts 'to obtain the elusive and incommunicable evidence of a witness' deportment while testifying, and a certain subjective moral effect is produced upon the witness.'(Ibid., pp. 125-126). It is only when the witness testifies orally that the judge may have a true idea of his countenance, manner and expression, which may confirm or detract from the weight of his testimony. Certainly, the physical condition of the witness will reveal his capacity for accurate observation and memory, and his deportment and physiognomy will reveal clues to his character. These can only be observed by the judge if the witness testifies orally in court. Indeed, the great weight given the findings of fact of the trial judge in the appellate court is based upon his having had just that opportunity and the assumption that he took advantage of it to ascertain the credibility of the witnesses."

In *People vs. Manambit*,[23] the Court ruled that a judge's assessment on the credibility of the witnesses should be received with caution if he neither personally heard the testimony of the witnesses nor observed the way in which they had testified. Citing *People vs. Pido*,[24] the Court departed from the general rule that appellate courts should not disturb the factual findings of the trial court and held that, taking into account, among other things, the fact that it was another judge who received the testimony on direct examination and the major portion of the cross-examination of the witness, the judge who ultimately decided the case could not have had sufficient basis to form an opinion on the complainant's conduct at the trial.

Verily, affidavits would ordinarily be used, not to substantiate a case, but to impeach a witness at the trial where, almost invariably, such affidavits or sworn statements would even then be held unreliable to overturn testimony before the court.[25]

In the cases at bar, while the trial court acknowledged in convicting appellant that no evidence was presented to establish actual force, threat or intimidation, it broadly opined, however, that the moral ascendancy and influence of the accused as a father of the victim substituted for violence, threat or intimidation.

The reliance, I submit, is misplaced. The mere relationship of a father to his minor daughter is not enough to conclude the existence of "force, threat or intimidation." I still share the Court's view expressed in *People vs. Chua*,[26] reiterated in *People vs. Pastor*,[27] that the mere fact that a father exercises moral ascendancy over his daughter cannot ipso facto mean the equivalent of force, violence or intimidation, and the "presumption of moral ascendancy cannot and should not prevail over the constitutional presumption of innocence."

In the recent case of *People vs. Marahay*,[28] the accused was cleared on two (2) counts of rape committed against his twelve-year old daughter on the ground that the prosecution failed to establish the attendant circumstances that constituted rape. The Court justified its ruling thusly:

"Thus, when asked what occurred on the evening of 25 August 1994, xxxxx [private complainant] merely replied that her father "did the same thing" to her. When prodded to specify the acts done to her, she stated that her father "used her". No other detail was evoked from her to show the attendant elements that constitute rape, the crime charged. Such bare statements cannot suffice to establish accused-appellant's guilt with the required quantum of evidence." [29]

Notably, the Court did not consider the moral ascendancy of the accused over his daughter as being a substitute for the requisite proof of actual force, violence or intimidation.

I am not unaware of incestuous rape cases where the father's moral ascendancy and influence over his daughter have been considered in affirming rape convictions.[30] The Court has explained thusly: This ascendancy or influence "necessarily flows from the father's parental authority, which the Constitution and the laws recognize, as well as from the children's duty to obey and observe reverence and respect towards their parents. Such reverence and respect are deeply ingrained in the minds of Filipino children and are recognized by law. Abuse of both by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants." [31] A careful reading of these cases would show, nevertheless, that the records have not been not totally bereft of evidence of force, violence or intimidation exerted by the accused. Consistently, in these instances, indications are extant that the complainants have put up some physical struggle or been cowed into submission. Moral ascendancy, at best, merely reduces the degree or extent of proof ordinarily constitutive of actual force, threat or intimidation.[32] There must still be sufficient indication in evidence, whether by word or by action, that force, threat or intimidation has somehow been employed.

Appellant's exculpation from the offense of rape does not mean, however, that his responsibility is merely moral and not penal in character.[33] Complainant's narration of facts, i.e., appellant's sexual abuse of his own 12-year old daughter twice on 13 June 1998, clearly establishes the offense of qualified seduction. This offense is the act of having carnal knowledge of a virgin over 12 years but under 18 years of age and committed by any person in public authority, a priest, house-servant, domestic, guardian, teacher or any person who, in any capacity, shall be entrusted with the education or custody of the woman, but that, if the offender is the brother or ascendant of the victim, the latter's virginity or age, becomes immaterial.[34] The crime of qualified seduction has the following elements: a) the offended party is a virgin; b) she must be over 12 and under 18 years of age; c) the offender has sexual intercourse with her; d) there is abuse of authority, of confidence or of relationship.[35] If the offender is the brother or ascendant of the victim, elements (a) and (b) are dispensed with. Parenthetically, the relationship of the offender and the victim must be by consanguinity but need not be legitimate.[36]

While qualified seduction is not necessarily included in rape, one who is charged with rape may be found guilty of qualified seduction when the verified complaint for rape contains allegations which aver, and embodies the elements of, the crime of seduction.[37] The complaint and the information in this case has sufficiently alleged those elements, i.e. that appellant has had carnal knowledge of his 12-year old daughter, AAA, twice on 13 June 1998 in an apparent abuse of filial relationship. The real nature of the criminal charge is determined not from the caption or the preamble of the Information nor from the specification of the law alleged to have been violated - these being conclusions of law - but by the actual recital of facts in the complaint or information.[38] The Court, in *U.S. vs. Lin San*, [39] has held:

"From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. Whatever its purpose may be, its result is to enable the accused to vex the court and embarrass the administration of justice by setting up the technical defense that the crime set forth in the body of the Information and proved in the trial is not the crime characterized by the fiscal in the caption of the information. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real

question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of the pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense, he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, 'Did you perform the acts alleged in the manner alleged?' not, 'Did you commit a crime named murder?' If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named. If the accused performed the acts alleged in the manner alleged, then he ought to be punished adequately, whatever may be the name of the crime which those acts constitute." [40]

WHEREFORE, I vote to have the judgment of the Regional Trial Court of San Jose, Camarines Sur, Branch 30, in Criminal Case No. T-1904 and Criminal Case No. T-1905 MODIFIED by convicting appellant of the crime of QUALIFIED SEDUCTION in both cases and by holding him liable accordingly.

[1] Penned by Judge Alfredo A. Cabral.

[2] Rollo, p. 8.

[3] Exh. B, Record, p. 4.

[4] TSN, 27 January 1999, pp. 9-10.

[5] RTC Decision, p. 8.

[6] Parenthetically, under R.A. 8353, rape may be committed against a man.

[7] People vs. Mahinay 302 SCRA 457.

[8] People vs. Dulay, G.R. Nos. 144344-68, 23 July 2002.

[9] People vs. Mahinay, supra.

[10] People vs. Mendoza, G.R. No. 132923-24, 10 June 2002.

[11] Id.

[12] 362 SCRA 346

[13] 319 SCRA 743

[14] 281 SCRA 463

[15] People vs. Supnad, supra.

[16] See People vs. Empleo, 226 SCRA 454.

[17] People vs. Jariolne, 331 SCRA 674; People vs. Alicante, 332 SCRA 440; People vs. Castillo, 335 SCRA 795; People vs. Sirad, 335 SCRA 562.

[18] Arzadon vs. Arzadon, 15 Phil 77.

[19] *Brown vs. Runals*, 14 Wis. 693, 698.

[20] 5 *Wigmore on Evidence*, Section 1395, p. 123.

[21] See *U.S. vs. Macuti*, 26 Phil 170; *People vs. Perez*, 106 SCRA 436.

[22] 72 SCRA 429.

[23] 271 SCRA 344.

[24] 200 SCRA 45.

[25] *People vs. Geguira*, 328 SCRA 11.

[26] G.R. No. 137841, 1 October 2001, 366 SCRA 283.

[27] G.R. No. 140208, 12 March 2002.

[28] G.R. Nos. 120625-29, 28 January 2003

[29] *Id.*

[30] *People vs. Emilio*, G.R. No. 144305-07, 6 February 2003; *People vs. Tamsi*, G.R. Nos. 142928-29, 11 September 2002; *People vs. Miranda*, G.R. No. 142566, 8 August 2002; *People vs. Morfi*, G.R. Nos. 145449-50, 1 August 2002; *People vs. Rodavia*, G.R. Nos. 133008-24, 6 February 2002; *People vs. Freta*, 354 SCRA 385; *People vs. Dichoson*, 352 SCRA 56; *People vs. Francisco*, 350 SCRA 55; *People vs. Docena*, 322 SCRA 820; *People vs. Panique*, 316 SCRA 757; *People vs. Abella*, 315 SCRA 36; *People vs. Bation*, 305 SCRA 253; *People vs. Burce*, 269 SCRA 293; *People vs. Casil*, 241 SCRA 285; *People vs. Matrimonio*, 215 SCRA 613; *People vs. Robles*, 170 SCRA 557; *People vs. Erardo*, 127 SCRA 250.

[31] *People vs. Panique*, *supra*, citing *People vs. Matrimonio*, *supra*.

[32] See *Reyes*, *Revised Penal Code*, 13th ed., 1993, p. 776.

[33] *People vs. Subingsubing*, 228 SCRA 168, citing *People vs. Alvarez*, 55 SCRA 81.

[34] Article 337, *Revised Penal Code*.

[35] *Reyes*, *Revised Penal Code*, Book II, 14th ed., 1998, p. 861.

[36] *Id.*, p. 865.

[37] *Gonzales vs. Court of Appeals*, 232 SCRA 667; *People vs. Samillano*, 56 SCRA 573.

[38] *People vs. Resayaga*, 159 SCRA 426; *Oca vs. Jimenez*, 5 SCRA 425.

[39] 17 Phil 273.

[40] At pp. 278-279.

CONCURRING OPINION

BELLOSILLO, J.:

I am gratified that some of the views essayed herein, which I espoused during the deliberations, are shared by the Majority and graciously incorporated by the ponente in the opinion of the Court. Hence, the ponencia, scholarly and thorough as it is, can very well make this concurring opinion an exercise in superfluity. Nonetheless, a few words would not be amiss if only to expound and give emphasis to certain points.

As may be gleaned from the Majority opinion, we have reaffirmed the time-tested doctrine that in incestuous rape, actual force and intimidation need not be employed by the accused for they are substituted by the moral force he wields over his victim. This doctrine, first enunciated in *People v. Erardo*[1] and reechoed in *People v. Matrimonio*,[2] and in a relentless cascade of cases, is never an anachronism. It is still good law, and at the moment, I find no reason, as does the Majority, to depart from its enlightened guidance.

It has been broadly hinted by some quarters that the pronouncements of this Court in *People v. Mendoza*[3] and *People v. Supnad*[4] have virtually modified if not reversed the *Erardo* and *Matrimonio* cases. I am afraid I have to disagree. A juxtaposition of the factual settings of those cases and that of the instant case would reveal peculiar differences to justify my position and that of the Majority.

In *People v. Mendoza* the complainant testified that she was "raped" by the accused and in *People v. Supnad* she revealed that "her uncle had sexual intercourse with her twice in February and once in March." In both instances, it was obvious that the inculpatory testimonies of the complainants were too general and with nary a detail to explicitly establish any carnal knowledge of the victim by the accused. Consequently, the Court ruled that the proof of carnal knowledge with the use of force, threat or intimidation was not clear and thus aptly absolved the accused.

In contrast, the instant case has a far more detailed account of defloration by the complainant as disclosed in the following colloquy between the witness and the court -

Q:

While you were at your house at Barangay xxxxx , Lagonoy Camarines Sur on June 13, 1998 x x x at about 7:00 o'clock in the morning, tell us if there was an unusual incident that took place.

A: There was, sir.

Q: Tell us what that was?

A: I was abused by my father.

Q: When you say you were abused, tell us what exactly do you mean by that?

A: He raped me ,sir.

Q: When you said you were raped, what do you mean by that?

A: He "what" my organ x x x x

Court: What do you mean by "ari"?

A:

The organ of my father was inserted in my organ.

Atty. Briones - Again may it be put on record that the answer of the witness "pinapasok" is a tagalong term.

Court: What organ of your father?

A: His penis was inserted in my vagina.

Fiscal Solano - When the penis of your father was inserted inside your vagina, tell us what you felt?

A: Painful, sir.

Court: How do you know that it was inserted?

A: It was painful and he inserted it.

Q: How did he insert it?

A: He was pushing it in.

A theory has also been advanced that RA 8353, specifically Art. 266-D, makes the proof of physically overt act manifesting resistance a sine qua non in the prosecution of rape cases. Far from it, Art. 266-D epigraphed "Presumptions" is a rule of evidence that does not in any way prescribe an exclusivity of proof. As worded, physical overt act manifesting resistance x x x "may be accepted in evidence" to create the presumption that any of the acts punished under Art. 266-A has been committed. A restrictive interpretation of this provision would straightjacket the prosecution, leaving him no room to maneuver by presenting a host of other evidence that can well meet the quantum of proof required in the prosecution of rape. To torture the law with this interpretation would create an absurd situation where the accused in incest rape who, despite proof of carnal knowledge with his minor descendant, nonetheless goes off the hook by the mere failure of the minor victim to clearly express in words the act of violence or intimidation employed on her by the accused.

Granting that AAA failed to describe in her testimony any kind of physical overt act to manifest resistance, such as a physical struggle or an utterance of anguish at the very least, this in no way obviates the existence of force, threat and intimidation in the commission of the crime of rape.

We have to remember that in incest rape, the minor victim is placed in a decidedly unique disadvantage so that the assailant, by his overbearing moral influence, not to mention his heft bearing upon the puny victim, can afford to perpetuate his bestial act with unperturbed confidence and nonchalance. As a consequence, proof of force or violence required in incest rape becomes unnecessary, or shall we say a redundancy, unlike where the accused is not an ascendant or blood relative of the victim.

Thus, the failure of the victim to give testimony that force, threat and intimidation were employed by the accused would not effectively demolish the case for the prosecution as long as there is adequate proof that sexual congress did take place. The principle enunciated in *People v. Matrimonio*, citing *People v. Erardo*, gives a clear explanation of its rationale. Thus we held -

In a rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter substitutes for violence and intimidation. That ascendancy or influence necessarily flows from the father's parental authority, which the Constitution and the laws recognize, support and enhance, as well as from the children's duty to obey and to observe reverence and respect towards their parents. Such reverence and respect are deeply ingrained in the minds of Filipino children and are recognized by law (underscoring supplied).[5]

This principle is founded on the truism that no daughter would willingly submit to the lechery of her father.

While it may be true that most of the incest rape cases resolved by this Court almost invariably demonstrate a shred of proof of physical struggle on the part of the offended party, not one modifies the clear and categorical ruling that moral ascendancy takes the place of force, violence and intimidation. The unqualified pronouncements of this Court need no tortuous interpretation. To illustrate:

Furthermore, and more importantly, actual force or intimidation need not even be employed for rape to be committed, as in the present case, where the overpowering influence of accused-appellant who is private complainants' father, suffices.[6] Undoubtedly, private complainants' tender age and accused-appellant's custodial control and domination over them rendered the former so meek and subservient to the lecherous advances of the latter.

In the incestuous rape of a minor, proof of force and violence exerted by the aggressor is not essential. The moral and physical ascendancy of the father over his daughter-victim is sufficient to cow her into submission to his bestial desires.[7]

Settled is the rule that in a rape committed by a father/stepfather against his own daughter/stepdaughter, the former's moral ascendancy and influence over the latter substitutes for violence and intimidation. That ascendancy or influence necessarily flows from the father/stepfather's parental authority, which the Constitution and the laws recognize, support and enhance, as well as from the children's duty to obey and observe reverence and respect towards their parents. Such reverence and respect are deeply ingrained in the minds of Filipino children and are recognized by law. Abuse of both by a father/stepfather can subjugate his daughter/stepdaughter's will, thereby forcing her to do whatever he wants (emphasis supplied).[8]

Incidentally, the case of *People v. Chua*[9] decided in 2001 holding the contrary view that moral ascendancy does not ipso facto lead to a presumption of force and intimidation seems not to have taken root since more recent cases, i.e., *People v. Emilio*,^[10] *People v. Tamsi*,^[11] *People v. Miranda*,^[12] *People v. Rodavia*,^[13] to name a few, have reverted to and readhered to the principle laid down in *People v. Erardo*.

It need not be stressed that the conduct of the complainant immediately following the alleged assault is of utmost importance to establish the truth and falsity of the charge of rape.^[14] The fact that AAA immediately told her half-sister xxxxx about her dreadful experience after which they hurriedly went to their Aunt xxxxx and angrily reported the matter to her, leaves not a whit of doubt that she was indeed a victim of rape.

In view of the foregoing, I concur with the Majority.

[1] No. L-32861, 31 January 1984, 127 SCRA 250.

[2] G.R. Nos. 82223-24, 13 November 1992, 215 SCRA 613.

[3] G.R. Nos. 132923-24, 10 June 2002.

[4] G.R. Nos. 133791-94, 8 August 2001, 362 SCRA 346.

[5] See Note 1.

[6] *People v. Robles*, G.R. No. 53569, 23 February 1989, 170 SCRA 557, 561.

[7] *People v. Sagaral*, G.R. Nos. 112714-15, 7 February 1997, 267 SCRA 671; *People v. Escobar*, G.R. Nos. 122980-81, 6 November 1997, 281 SCRA 498; *People v. Tan, Jr.*, G.R. Nos. 103134-40, 20 November 1996, 264 SCRA 425..

[8] *People v. Lucas*, G.R. No. 80102, 22 January 1990, 181 SCRA 316; *People v. Caballes*, G.R. Nos. 93437-45, 12 July 1991, 199 SCRA 152; and *People v. Alcid*, G.R. Nos. 66387-88, 28 February 1985, 135 SCRA 280.

[9] G.R. No. 137841, 1 October 2001, 366 SCRA 283.

[10] G.R. Nos. 144305-07, 6 February 2003.

[11] G.R. Nos. 142928-29, 11 September 2002.

[12] G.R. No. 142566, 8 August 2002.

[13] G.R. Nos. 133008-24, 6 February 2002.

[14] People v. Lamarroza, G.R. No. 126121, 24 November 1998, 299 SCRA 166; People v. Grefiel, G.R. No. 7728, 13 November 1992, 215 SCRA 596; People v. Jaca, G.R. No. 104628, 18 January 1994, 229 SCRA 332; People v. Galera, G.R. No. 115938, 10 October 1997, 280 SCRA 492.

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