

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FAUSTINO DULAY @ “FAUS”, ACCUSED-APPELLANT.

G.R. Nos. 144082-83. April 18, 2002

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-144082-83/>

YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Urdaneta City, Branch 46, in Criminal Case No. U-10305, convicting accused-appellant of the crime of rape, sentencing him to suffer the penalty of reclusion perpetua and ordering him to pay the victim the amounts of P50,000.00 as moral damages and P25,000.00 as exemplary damages.

Accused-appellant was originally charged with rape in Criminal Case No. U-10305, and sexual assault in Criminal Case No. U-10306, defined in Articles 266-B, and 266-A, paragraph (2), respectively, of the Revised Penal Code as amended by Republic Act No. 8353. He was acquitted in Criminal Case No. U-10306 for sexual assault but was convicted for simple rape in Criminal Case No. U-10305 under an Information which reads:

That in January, 1999, or thereabout, at Poblacion, Binalonan, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, who well knew that he was afflicted with Gonorrhea, a sexually transmitted disease, common-law husband of Cresencia Olimpo, the adoptive mother of herein complainant Princess Diana Olimpo, a minor, 9 years of age, through threat and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with said complainant who was transmitted with Gonorrhea as a consequence, against her will, to her damage and prejudice.

CONTRARY to Article 255-A, (sic) par. 1, in relation to Article 266-B, pars. 1 and 6, Revised Penal Code, as amended by Republic Act Nos. 7659 and 8353.[2]

Upon arraignment on November 11, 1999, accused-appellant pleaded not guilty.[3] Trial thereafter followed.

The facts show that complainant, Princess Diana Olimpo, is the biological child of Lolita Cervesa. After her birth on September 21, 1989, complainant was entrusted to Gloria Olimpo and her common-law spouse, accused-appellant Faustino Dulay. Complainant was thereafter registered in the Office of the Civil Registrar of Villasis, Pangasinan, as the child of Cresencia Olimpo and accused-appellant Faustino Dulay. In July 1998, Gloria Olimpo flew to the United States and left the complainant with her sister-in-law, Juanita Fariñas. Accused-appellant, however, took custody of complainant and brought her to Poblacion, Binalonan, Pangasinan.[4]

Sometime in January 1999, when the victim was nine (9) years of age, accused-appellant fingered her anus and inserted his penis into her vagina many times, causing her to feel pain. The victim narrated the incident to Gloria's son, Donald Olimpo, who in turn relayed the matter to her sister, Cristy Olimpo.[5] Consequently, the victim was examined and was found to be suffering from gonorrhea. Further examination yielded the following results:

S/S: Patient is conscious, coherent, F/N, F/D well kept.

Breast: Infantile, symmetrical, non tender.

Genitalia:

Pubic hair: none

Labia majora/Labia minora: well coaptated

Hymen: (+) deep healed laceration at 9 o'clock position

Vaginal Orifice: (+) erythema admits tip of 5[th] finger examining with resistance.[6]

In his defense, accused-appellant vehemently denied the accusations against him and insinuated that it was Donald Olimpo who molested the victim.[7] He stressed that if he indeed raped the victim, her sex organ would have been severely injured considering the size of his penis. To bolster his claim, he requested the court to examine his sex organ. Upon ocular inspection, the trial court found that there were embedded therein 3 pellets; and the same measures 6 inches in length and 2 inches in diameter when not fully erect.[8] The defense, likewise, proffered the theory that the rape charge was a mere fabrication of Gloria Olimpo's relatives who were opposed to his relationship with the latter.

On May 15, 2000, the trial court rendered the assailed decision. The dispositive portion thereof states:

WHEREFORE, JUDGMENT is hereby rendered:

- In CRIM. CASE NO. U-10305, CONVICTING FAUSTINO DULAY @ "FAUS" of the crime of Simple Rape, and the Court sentences Faustino Dulay @ "Faus" to suffer the penalty of Reclusion Perpetua; to indemnify Princess Olimpo the sum of P50,000.00 as moral damages and further sum of P25,000.00 as exemplary damages.

- In CRIM. CASE NO. U-103506, ACQUITTING FAUSTINO DULAY @ "FAUS" of the crime of Rape for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Branch Clerk of Court is hereby ordered to prepare the mittimus.

The Jail Warden, Bureau of Jail Management and Penology, Urdaneta District Jail, Urdaneta City, is hereby ordered to deliver the person of Faustino Dulay @ "Faus" to the National Bilibid Prisons, Muntinlupa City, immediately upon receipt of this Decision.

SO ORDERED.[9]

Accused-appellant appealed his conviction for rape in Criminal Case No. U-10305, on the following assignment of errors:

I

THE TRIAL COURT ERRED IN NOT CONSIDERING THAT IT WAS IMPOSSIBLE FOR ACCUSED-APPELLANT TO HAVE RAPED THE VICTIM WITHOUT CAUSING SERIOUS INJURY ON HER GENITALS.

II

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE RAPE CHARGE DESPITE ABSENCE OF ANY EVIDENCE SHOWING THAT HE WAS INFECTED WITH GONORRHEA.

III

THE TRIAL COURT ERRED IN NOT CONSIDERING THAT THE RECORDS ARE REplete WITH

OTHER CIRCUMSTANCES CLEARLY POINTING TO THE INNOCENCE OF THE ACCUSED-APPELLANT OF THE CRIME CHARGED.[10]

In resolving rape cases, the complainant's credibility becomes the single most important issue. In view of the intrinsic nature of the crime of rape where only two persons normally are involved, the testimony of the complainant must always be scrutinized with great caution, and the evidence for the prosecution must stand or fall on its own merits and should not be allowed to gain validity from the lack of evidence for the defense.[11]

Guided by the foregoing principles, we have carefully examined the testimony of Princess Olimpo and found no error on the trial court's giving credence to her declarations. Complainant, who was only 10 years old when she testified, was candid and straightforward in her version of the facts. She was not shown to have the shrewdness and callousness of a woman who would concoct such a story and endure physical examination and public trial if her story were untrue. The Court has consistently held that when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed.[12] Moreover, the records show that the complainant was crying when she testified. In a number of cases, this has been held to be evidence of truthfulness of the rape charge with the verity born out of human nature and experience.[13]

The Court sees no reason to depart from the conclusions of the trial court whose findings of facts are accorded great respect, being in the unique position to observe the demeanor, act, conduct, and attitude of the witnesses in court while testifying.[14] Verily, the trial court correctly disregarded the ill motive imputed by accused-appellant on the relatives of the complainant. It is highly improbable that they would concoct a story of defloration, allow an examination of complainant's private parts and submit her to public humiliation and scrutiny via an open trial, if her sordid tale was not true and their sole motivation was not to have the culprit apprehended and punished.[15]

The prosecution need not prove the element of force and intimidation in the case at bar. In rape committed by a father or a person recognized by the victim as her father, as in the present case, the former's moral ascendancy and influence over the latter substitutes for violence and intimidation.

In *People v. Pagdayawon*,[16] the Court held 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.

There is no merit in the contention of accused-appellant that the absence of severe injury on the genitalia of the complainant disproves the fact of rape. It should be stressed that injury in the genitalia of the victim and the size of accused-appellant's penis, who had the audacity to flaunt it before the trial court, are immaterial in a charge of rape. Full penetration is not required to sustain the conviction of rape, and it is enough that there be entrance of the male organ within the labia of the pudendum of the female organ. In fact, penetration of the penis by the entry into the lips of the female organ even without rupture or laceration of the hymen suffices to warrant conviction for rape.[17]

The Court is likewise not convinced that the actuations of the complainant after the rape belies the commission of rape. Her alleged good relationship with accused-appellant even after the rape will not acquit him of the rape charge. Not every victim of a crime can be expected to act reasonably and conformably to the usual expectations of everyone. People may react differently to the same situation, as what complainant did.[18] At the tender age of 9, complainant cannot be expected to react as an adult and realize the repercussions of the wrong committed upon her by the man she considered as her father.

We find immaterial the failure of the prosecution to prove that accused-appellant was suffering from a venereal

disease or any sexually transmissible disease. While it is true that in Criminal Case No. U-10305 the information charged him with rape under paragraph (6), of Article 266-B, (where the offender is aware that he/she is afflicted with a sexually transmissible disease), his conviction, however, was for rape under paragraph (1), of Article 266-B, (where the victim's minority and relationship with the offender are qualifying), for which he was also indicted in the same information. Thus, whether or not he was afflicted with a sexually transmissible disease is immaterial in the instant appeal.

Article 266-B, paragraph (1), of the Revised Penal Code, as amended by Republic Act No. 8353, provides that the death penalty shall be imposed if 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. While the age of the victim was alleged in the information and proven at the trial, the qualifying circumstance of relationship was not established by the prosecution. As stated in the information, accused-appellant was indicted for rape as the "common-law husband of Cresencia Olimpo, the adoptive mother of herein complainant." The records show that the complainant was registered in the Civil Registrar of Villasis, Pangasinan, as the child of Cresencia Olimpo and accused-appellant Faustino Dulay. The records likewise reflect that complainant grew up under the care of accused-appellant and his common-law spouse, Gloria Olimpo. Though there was no categorical declaration to this effect, it appears from the testimony of the prosecution witnesses and that of accused-appellant that Gloria Olimpo is the same Cresencia Olimpo registered as the mother of the complainant. However, regardless of their identity and their relationship with accused-appellant, the penalty imposed by the trial court will not be affected. This is because neither Gloria nor Cresencia is the biological or the legally adoptive mother of the complainant. Consequently, accused-appellant will not fall under "common-law spouse of the parent of the victim." Failing to establish the aggravating circumstance of relationship, accused-appellant was correctly convicted of simple rape punishable by reclusion perpetua.[19]

As to accused-appellant's civil liability, the Court further awards the complainant P50,000.00 as civil indemnity, which, like moral damages, is automatic upon the finding of the fact of rape.[20] The P25,000.00 exemplary damages is affirmed in view of the presence of the aggravating circumstance of minority of the complainant.[21]

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Urdaneta City, Branch 46, in Criminal Case No. U-10305, finding accused-appellant Faustino Dulay alias "Faus", guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua is AFFIRMED with the MODIFICATION that in addition to the P50,000.00 moral damages and P25,000.00 exemplary damages, accused-appellant is further ordered to pay the victim P50,000.00 as civil indemnity.

SO ORDERED.

Puno, J., concur.

Sandoval-Gutierrez, J., (special member), concur.

Davide, Jr., C.J., (Chairman), Kapunan, and Austria-Martinez, JJ., on official leave.

[1] Penned by Judge Modesto C. Juanson.

[2] Records, p. 1.

[3] Records, p. 69.

[4] TSN, December 15, 1999, pp. 2-7 and Exhibit "F", Records, p. 104.

- [5] Ibid., December 7, 1999, pp. 2-6.
- [6] Exhibit "A", Records, p. 20.
- [7] TSN, March 7, 2000, pp. 10-11.
- [8] Ibid., pp. 12-13.
- [9] Rollo, p. 37.
- [10] Rollo, pp. 66-67.
- [11] People v. Portugal, G.R. No. 143030, March 12, 2002.
- [12] People v. Tadeo, G.R. Nos. 128884-85, December 3, 2001, citing People v. Correa, 269 SCRA 76 [1997]; People v. Malabago, 271 SCRA 464 [1997].
- [13] People v. Garcia, G.R. No. 117406, January 16, 2001, citing People v. Gecomio, 254 SCRA 82 [1996]; People v. Joja, 227 SCRA 9 [1993].
- [14] People v. Nuevo, G.R. No. 132169, October 26, 2001, citing People v. Maglente, 306 SCRA 546 [1999].
- [15] People v. Nardo, G.R. No. 133888, March 1, 2001, citing People v. Taño, 331 SCRA 449 [2000], People v. Amigable, 329 SCRA 527 [2000], People v. Sampior, 327 SCRA 31 [2000].
- [16] G.R. No. 130522, February 15, 2001, citing People v. Matrimonio, 215 SCRA 613 [1992].
- [17] People v. Balas, G.R. No. 138838, December 11, 2001, citing People v. Sandico, 307 SCRA 204 [1999].
- [18] People v. Cabel, 282 SCRA 410, 422 [1997], citing People v. Rosare, 264 SCRA 398 [1996].
- [19] People v. Asuncion, G.R. No. 136779, September 7, 2001.
- [20] People v. Palermo, G.R. No. 120630, June 28, 2001.
- [21] People v. Agravante, G.R. Nos. 137297 & 138547-48, December 11, 2001, citing People v. Catubig, G.R. No. 137842, August 23, 2001.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.