

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GAUDENCIO UMBANA Y DURAN, ACCUSED-APPELLANT.

G.R. Nos. 146862-64. April 30, 2003

Ponente: AZCUNA, J.

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AZCUNA, J.:

On automatic review is the Judgment[1] of the Regional Trial Court of Lianga, Branch 28, of Surigao del Sur, dated December 6, 2000, finding Gaudencio Umbaña y Duran, guilty of three counts of rape, committed against his daughter, complainant Cheril L. Umbaña. For each count, the trial court imposed the penalty of death, indemnity of P75,000.00, moral damages of P50,000.00, exemplary damages of P50,000.00, plus costs.

Quoted hereunder are the three similarly worded informations filed against appellant Gaudencio Umbaña:

CRIMINAL CASE NO. L-1614

That on the 3[rd] day of September, 1999 at about 1:00 o'clock in the early morning, more or less, in Purok III, poblacion of the municipality of Barobo, province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a kitchen knife enter[ed] the room where his daughter Cheril Umbaña was sleeping and once inside, threaten[ed] the victim not to shout, remove[d] her pants and underwear and with lewd designs, with force, and intimidation, did then and there willfully, unlawfully and felon[i]ously have sexual intercourse with his daughter Cheril Umbaña against her will.

CONTRARY TO LAW. (In violation of Article 335 of the Revised Penal Code).[2]

CRIMINAL CASE NO. L-1615

That on the 4[th] day of September, 1999 at about 1:00 o'clock in the early morning, more or less, in Purok III, poblacion of the municipality of Barobo, province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a kitchen knife enter[ed] the room where his daughter Cheril Umbaña was sleeping and once inside, threaten[ed] the victim not to shout, remove[d] her pants and underwear and with lewd designs, with force, and intimidation, did then and there willfully, unlawfully and felon[i]ously have sexual intercourse with his daughter Cheril Umbaña against her will.

CONTRARY TO LAW. (In violation of Article 335 of the Revised Penal Code).[3]

CRIMINAL CASE NO. L-1616

That on the 5[th] day of September, 1999 at about 1:00 o'clock in the early morning, more or less, in Purok III, poblacion of the municipality of Barobo, province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a kitchen knife enter[ed] the room where his daughter Cheril Umbaña was sleeping and once inside, threaten[ed] the victim not to shout, remove[d] her pants and underwear and with lewd designs, with force, and intimidation, did then and there willfully, unlawfully and felon[i]ously have sexual intercourse with his daughter Cheril Umbaña against her will.

CONTRARY TO LAW. (In violation of Article 335 of the Revised Penal Code).[4]

Upon arraignment, appellant pleaded not guilty. Trial on the merits ensued.

Through testimonial evidence, the following facts were established:

Gaudencio Umbaña (Gaudencio) married Lilia Lonzaga (Lilia) on August 17, 1977.[5] He was then 30 years old while she was only 17. They had two children, Cheril and Glenn. The spouses separated in 1992, when Gaudencio went to Zamboanga to work. Glenn went with him while Cheril remained with her mother. Lilia and Cheril went to New Sibunga, Nabunturan (Nabunturan) to live with Lilia's mother Rosa Lonzaga. Gaudencio gave financial support for Cheril's studies.[6] Unfortunately, he got sick in 1995 and as a consequence was hospitalized. Thereafter, he applied for his Social Security System (SSS) sick benefits but found out that Lilia had already declared him dead and had in fact claimed his SSS death benefits.[7] Gaudencio then filed a case against Lilia, for which the latter was found guilty and sent to prison. Prior to filing the case, he told Cheril and Glenn about it and they were against it. However, he still filed the case, telling the children that it was for their own future.[8]

When Gaudencio came home from Zamboanga, Cheril told him that she was interested in going back to school. Thus, he talked to his niece Liza Umbaña in Manila and the latter said she would send money for the children's fare to Manila. Both Cheril and Glenn agreed to go to Manila, with the conformity of their maternal grandmother, Rosa Lonzaga.[9]

From the foregoing facts, the prosecution and the defense now differ in their versions of what transpired next.

The prosecution's version is based on the testimony of its main witness, complainant CHERIL L. UMBÑA.[10]

Cheril testified, as follows:

She was born on October 7, 1978[11] and at the time the rapes occurred, she was 20 years old.[12] She was previously staying with her maternal grandmother, Rosa Lonzaga, in Nabunturan. However, her father, appellant, convinced her and her younger brother to go with him to Manila.

When her father first re-appeared in their lives, she was angry at him for having abandoned them for so many years. However, when he invited them to go to Manila, she believed that her father was sincere in helping them. She did not notice from the behavior of her father that he was personally interested in her.[13]

When they agreed to go with him, they were brought to the house of one of her uncles in Mangagoy, Bislig (Mangagoy). However, it was only her younger brother who was actually sent to Manila.[14] Her father explained that she could not go yet as the money sent by their cousin was not enough as fare for the two of them. She was left by her father in Mangagoy and she stayed there for about a month.

Subsequently, her father again called their relatives in Manila and asked for money for her fare. Although the money was sent, her father did not give it to her. Instead, he spent it for his own needs. After spending the money, her father came back to Mangagoy to fetch her. At that time, their relatives in Manila called to ask if she could already travel to Manila. However, her father said that he had to accompany her to Manila on the pretext that he was afraid there might be big waves or a typhoon. It was at that time, during the last week of August 1999, when she was brought by her father to her paternal grandmother's house in Purok 3, Barobo, Surigao del Sur (Barobo).[15]

On September 3, 1999, at around 1:00 a.m., she was already staying in Barobo. The other occupants of the house were appellant's mother, Teodula Umbaña, and two of appellant's nephews named Dhondever and Dodong Umbaña.[16] While she was sleeping alone in one of the rooms in the house, she heard a creaking sound and saw that the door to her room was being opened. She saw her father enter the room. He sat at the foot of her bed and

proceeded to slice tobacco into pieces, roll the same and then he smoked the tobacco.[17] She pretended to be asleep but was consciously observing him.

When appellant had finished smoking, he approached her and told her not to shout. Using the same knife he used in slicing the tobacco, he pointed the same to the left side of her body and held her right hand.[18] Without being told, she understood that he meant to rape her.[19] She pleaded with him to have pity. She kept telling him “No Pa, Do not Pa, Do not Pa,” but her cries were ignored.[20] Her father cautiously and slowly removed her pants and panty. She was again warned not to shout and threatened with the knife.[21] The knife was sharp and about ten inches long including the handle. She tried to ward him off but he was very strong. When her pants and panty had been removed, her father also removed his own shorts. Thereafter, he inserted his penis into her vagina.[22] Again, she tried to gather strength but her fear of the knife prevailed against her. Appellant engaged in a push and pull motion while he was on top of her for approximately 15 minutes. She cried because she felt pain. She did not feel any semen from appellant’s organ.[23]

Appellant then stood up and wore his short pants. Before leaving, he warned her not to reveal what had happened and said “Kung mabulabog, ikaw ang mauna.”[24] She understood the same to mean that if the incident was made known to her grandmother and cousins living in the house, she, Cheril would be the first one killed.

Bringing the knife with him, appellant left the room. She remained inside as it was still early morning. When she woke up later, she confided her ordeal to her male cousin, Dhondever. Although she wanted to leave the house, she could not do so because she had no money.[25]

For two succeeding mornings thereafter, the bestial acts were repeated: Appellant was able to rape her two more times, on September 4 and 5, 1999.[26] She states that although she struggled to be free from him, she was overpowered by her fear and by his strength.[27] After each time her father raped her, he always gave out the warning: “Remember what I told you, watch out.”[28] She couldn’t leave the room after the rapes as her father slept in the sala outside.

During the times she was raped, she knew it was 1:00 a.m. because there was a clock in her room. Her father held her hands “strongly.” She tried to wiggle her body but her father got mad and threatened her with the knife.[29] Although he did not cover her mouth, she did not shout because she was threatened with the knife.[30] Looking at his face, she observed that it was as if he was not her father, and she believed her father would have killed her if she did not submit to his lust.[31] She was able to see his face in the night because of the lamp he used in lighting his tobacco.[32] The bed made of plywood did not make any creaking sound.[33] The other occupants of the house did not hear her pleas with her father because they were already asleep.[34]

With regard to the rape on the second night, the reason why she did not arm herself with a bolo or bar the door with a nail so that her father could not enter, was because she could not get hold of a knife as all the knives in the house were kept by her father.[35] That whole day after the first rape, she was in the house, thinking of escaping and secretly telling her cousin about what happened. That whole day, her father was also in the house watching her.[36] She was able to talk to her father that day on the porch, and she asked him “Why did you molest me?” To which he replied, “This is not to molest you, Day.” She understood this to mean that her father will make her as his wife.[37]

Furthermore, she did not tell her grandmother Teodula Umbaña about what her father had done to her because she knew her father and grandmother were very close. She was afraid her grandmother might not believe her.[38] Although her lola was good as a grandmother, they did not always talk to each other. Besides, she did not permanently reside with this grandmother. It was to her cousin on whom she confided because they were almost of the same age.[39]

She did not sleep with her grandmother in the latter's room because the bed was very small. She was only able to close the door but unable to lock it as there was no lock installed.[40]

She reported each incident to her cousin but she still had no money to enable her to leave.

On September 6, 1999, her cousin gave her P60.[41] While her father was sleeping, she immediately rode a bus leaving Barobo, and proceeded to her maternal grandmother's house in Nabunturan. She arrived in Nabunturan at around 5 p.m. She immediately told her grandmother, Rosa Lonzaga, about her ordeal. She cried out of bitterness from what had happened to her but also out of joy for having escaped.[42] She was then brought to her mother in Tagum City. When her mother learned about what had happened, she was angry and she also cried. The following morning, she and her mother went to the police in Tagum and had the incident put on the blotter. They were also informed that appellant had followed her to Nabunturan.[43]

On September 9, 1999, at 10:45 a.m., she was physically examined at the Lianga District Hospital. The findings contained in the medical certificate[44] appear as follows:

Genitalia:

Hymen thin, no laceration, no scars, hymen not intact with hymenal tags at 2-5 o'clock, depressed fourchette, erythematous vulva, admits index finger with ease, (+) curd-like discharges.

DR. GINA T. VILLOS, a medical officer, was also presented by the prosecution, and she testified on the contents of the aforesaid medical certificate, and further stated that at the time she conducted the physical examination on Cheril, there was "no recent laceration." [45] She added, however, that the hymen was not intact anymore and had "old" lacerations.[46] She also mentioned that Cheril told her that she had been raped by her father more than once, and that the last rape occurred on September 5, 1999.[47]

The defense presented a different version, through four witnesses, namely, appellant Gaudencio Umbaña, his brothers Celestino and Gerardo Umbaña and a childhood friend, Alberto Polancos.

Appellant GAUDENCIO UMBÑA interposed the defenses of alibi and denial. He completely denies the rape charges against him. He avers that complainant's testimony is a lie and a mere concoction.[48]

He narrates that when his children agreed to go with him to Manila, he first brought them to the house of his elder brother, Gerardo Umbaña, in Mangagoy. He stayed with them to wait for their fare to be sent by his niece, Liza Umbaña, from Manila. When the money arrived, only Glenn was able to leave as the money for Cheril's fare was used for the fare of the other grandchildren.[49] He then brought Cheril with him to Barobo in May of 1999. She stayed there only for a month, then Cheril asked permission to go to Mangagoy to his brother Gerardo Umbaña's house. Cheril complained that Barobo was lonely. Cheril stayed in Mangagoy for some time but he fetched her when his brother Gerardo wrote him a letter stating that he was ashamed of the gossip about Cheril. He was told that Cheril would leave Gerardo's house at around 4:00 p.m. and return only at 10:00 a.m. the following day. True enough, Cheril was not around when he came to fetch her and was out with her barkadas.[50]

A confrontation between father and daughter ensued when Cheril arrived. Cheril told him he had no business or right to reprimand her as she did not grow up with him and they only met when she was already a grown-up lady.[51] Cheril went near him and kept on pointing her finger at him. At that, he grabbed her hair and she got bumped on the table. Cheril was crying and was treated and given medication. Father and daughter again went to live in Barobo starting August 30, 1999.[52]

Appellant further testified that on the night of September 2, 1999, he was at his mother Teodula Umbaña's house in Barobo.[53] Also staying in the house were his mother Teodula, his daughter Cheril, his two nephews

Dhondever and Domingo Umbaña. He slept on a folding bed in the sala, along with his two nephews. Cheril slept by herself in one of the rooms, while Teodula also occupied the other room adjacent to Cheril's. Each room had a door from the sala.[54] After watching television that night, he went to sleep and woke up at 5:00 a.m. the following day, September 3, 1999. On the alleged occurrence of the first rape, or at 1:00 a.m. of September 3, 1999, he was in fact fast asleep. He did not wake up from midnight of September 2, 1999 to 5:00 a.m. of September 3, 1999.[55]

After waking up, he had breakfast and then left the house to go to the mountain of Sudlon. His mother owned a parcel of land there and he intended to make copra so that he can use the proceeds for Cheril's fare in going to Manila. He was with Celestino Umbaña, Salome Umbaña, Bebi Umbaña and two other companions including the coconut climber. He also mentioned the names of Ally Polancos and Virgilio Maraňan as additional companions.[56]

On the night of September 3, 1999, up to the early morning of September 4, 1999, the time when the second incident of rape allegedly occurred, appellant claimed that he was away at his brother Anghel's house in the mountain of Sudlon. Together with his brother Celestino, he slept at Anghel's house while their other companions went home to their own houses for the night.[57] His mother's house, where the rapes allegedly occurred, was located eight kilometers away from the coconut plantation where they made copra, and the house of Anghel where they slept.[58]

In the afternoon of September 4, 1999, a Saturday, he went home to Barobo, arriving at around 6:00 p.m.[59] During supper that night, Cheril asked permission from him to visit her mother at Tagum before she (Cheril) leaves for Manila. Appellant refused because the trip would entail additional expense. Cheril got mad. He spent the night there and just slept.[60]

The following day, September 5, 1999, at around 5:00 a.m., the whole family went to church. He then helped his mother feed the pigs that morning and, in the afternoon, he went to the central part of the poblacion.[61]

The next day, Monday, September 6, 1999, when appellant woke up, he went back to the mountain to dry the copra. Cheril was left in the house. When he got back from the mountain, Cheril was no longer in the house and she did not come home that night. His nephew Dhondever informed him that Cheril had gone to Nabunturan.[62] He decided to follow Cheril and left in the afternoon of September 7, 1999. He arrived in Nabunturan on September 8, 1999 at 8:00 p.m. He was immediately apprehended by the CAFGU and the police. When he was brought to the Nabunturan Police Station, he was surprised to learn that a rape case had been filed against him by his daughter. He was then brought to the Barobo Police Station.[63]

On cross-examination, appellant further testified that it was his custom to smoke during nighttime. When he would wake up during midnight, he "smoke[s] to breath[e] fresh air." [64] He knew that Cheril sleeps alone in her room and that the room is closed only with a plywood door.[65]

In addition to appellant's testimony, the three other witnesses testified, thus:

ALBERTO POLANCOS and CELESTINO UMBaña corroborated appellant's testimony as to his whereabouts on September 3, 1999. Alberto[66] confirmed that he saw the brothers appellant and Celestino Umbaña gathering coconuts in the morning of September 3, 1999.[67] Later that day, as Alberto was on his way back home, he again saw the two, still hard at work.[68] That night, Alberto proceeded to Anghel Umbaña's house where appellant and Celestino were staying. They talked about old times, after which Alberto left Anghel's house at around 10:00 p.m. Alberto assumed that both appellant and Celestino spent the night at Anghel's house.[69]

Celestino[70] also testified that on September 3, 1999, he and his brother, appellant spent the whole day making

copra at Sudlon, in the yard of the house of their other brother Anghel.[71] They then saw Alberto Polancos pass by on his way to Barobo. Shortly before they finished their work at around 5:00 p.m., Alberto Polancos again passed by.[72] They had supper at Anghel's house at around 8:00 p.m. Thereafter, Alberto Polancos arrived and stayed at Anghel's house for about an hour. After Alberto left, appellant and Celestino slept. They slept side by side below the bed where Anghel was sleeping. Anghel requested them to stay for the night as he had no companion and was sick of diabetes.[73] The next morning, September 4, 1999, the copra was already dry. Appellant was able to leave Sudlon at around 2:00 p.m. in order to sell the copra. Celestino gave his share of the proceeds to appellant as the latter was in need of money for the fare to Manila.[74]

As Cheril's uncle, Celestino was surprised to learn of the case she filed against her father. He did not recall any instance while they were growing up, when appellant was ever abusive of their female relatives.[75]

GERARDO UMBANA, appellant's younger brother, testified[76] that prior to Cheril's stay at Teodula Umbaña's house, her father had brought her to stay at his house in Bislig, Surigao del Sur in May 1999. She stayed with him and his family until around August 1999.[77] At that time, he sent a letter to his brother, appellant, to fetch Cheril because she was always out gallivanting, sometimes failing to return home for the night and she would get back only the next day.[78] In fact, when appellant arrived to fetch Cheril, the latter was not around for the night. When Cheril returned the next day, appellant was so mad and a heated argument ensued between father and daughter. Gerardo witnessed how her brother "mauled" Cheril. Gerardo tried to pacify appellant.[79] Cheril got mad and uttered: "I will let you put (sic) in jail." [80] He heard Cheril say to her father, "You were not able to dominate my mother, how much more for me." [81]

On cross-examination, Gerardo declared that during those times when Cheril did not spend the night in his house in Bislig, he knew that she slept at his brother Felix' house in Mangagoy.[82] Gerardo observed that Cheril had a different character, that she was the type to fight back or "retort." [83]

On December 6, 2000, the Regional Trial Court rendered the assailed Judgment, which disposed of the case, as follows:

WHEREFORE, finding the accused Gaudencio Umbaña y Duran, 55 years old and residing at Barobo, Surigao del Sur, guilty beyond reasonable doubt of the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act 7659, he is hereby sentenced:

a)

In Criminal Case No. L-1614 to suffer the penalty of death by lethal injection with all the accessory penalties provided for by law, to indemnify the victim the sum of P75,000.00, to pay the sum of P50,000.00 as moral damages, to pay the sum of P50,000.00 as exemplary damages and to pay the cost;

b)

In Criminal Case No. L-1615 to suffer the penalty of death by lethal injection with all the accessory penalties provided for by law, to indemnify the victim the sum of P75,000.00, to pay the sum of P50,000.00 as moral damages, to pay the sum of P50,000.00 as exemplary damages and to pay the cost;

c)

In Criminal Case No. L-1616 to suffer the penalty of death by lethal injection with all the accessory penalties provided for by law, to indemnify the victim the sum of P75,000.00, to pay the sum of P50,000.00 as moral damages, to pay the sum of P50,000.00 as exemplary damages and to pay the cost.

The Provincial Warden of Surigao del Sur is ordered to immediately commit the body of the accused Gaudencio Umbaña to the custody of the Director of Prisons, New Bilibid Prisons, Muntinlupa City.

Let the records of this case be sent to the Supreme Court, Manila, for automatic review.

SO ORDERED.[84]

In his brief, appellant submits the following assignment of errors:[85]

I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT;

II

THE COURT A QUO GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE SUPREME PENALTY OF DEATH DESPITE THE FAILURE OF THE PROSECUTION TO SPECIFY THE AGGRAVATING CIRCUMSTANCE IN THE INFORMATION; and

III

THE COURT A QUO GRAVELY ERRED IN INDEMNIFYING PRIVATE COMPLAINANT THE AMOUNT OF P75,000.00 FOR EACH COUNT.

Appellant thereby raises issues on three points: (1) the sufficiency of the evidence for the prosecution; (2) the propriety of the imposition of the death penalty; and (3) the correctness of the amount of indemnity awarded.

(1) On the Sufficiency of the Evidence

Appellant contends that Cheril's testimony is incredible.[86] Cheril and her mother Lilia allegedly have the propensity to concoct stories.[87] In addition, he claims that they had the motive to fabricate the charges against him and Cheril harbored ill-feelings towards him for years.[88] Appellant insists that his defense of alibi was sufficiently corroborated by his witnesses.

For appellee, the Office of the Solicitor General (OSG) contends that contrary to appellant's assertion, the prosecution's evidence amply established appellant's guilt. Appellee points out that, as found by the trial court, complainant did not waver in her testimony.[89] Finally, appellee asserts that the testimonies of the defense witnesses showed bias in appellant's favor.

In the review of rape cases, we have been guided by certain precepts. First, an accusation of rape can be made with facility. It may be difficult to prove, but it is even more difficult for the accused, though innocent, to disprove. Second, the complainant's testimony must be scrutinized with extreme caution. This principle finds its basis in the very nature of the crime where usually only two persons are involved. Third, the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[90]

With these in mind, Cheril's testimony was carefully scrutinized and we are convinced that her testimony is credible, and unmarred by any hint of untruth or prevarication.

We agree with the observations of the trial court that "[s]he was young, educated and intelligent. The way she answered the questions pro[p]ounded [to] her indicated all sincerity and truthfulness." The trial court saw sincerity in her eyes when she declared that she had lost respect for her father because what he had done to her "cannot be eaten by the dog." [91] In contrast, the trial court found that the evidence for the defense was "concocted and fabricated."

Time and again, we have accorded high respect to the trial court's evaluation of the testimonies of witnesses, the trial judge being the person best-equipped to appreciate testimonial evidence and assign values to the declaration

of different witnesses.[92] On several occasions, we have explained:

Long settled in criminal jurisprudence is the rule that when the issue is one of credibility of witnesses, appellate courts will not disturb the findings of the trial court. This rule is justified by the fact that the trial court is in a better position to decide the question. Having the advantage of directly observing witnesses, “the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.[93]

In the instant case, we see no reason to depart from the findings of the trial court on the matter of Cheril Umbaña’s credibility.

Even the testimony adduced by the defense portraying Cheril as a disrespectful and wayward child does not detract from her credibility as a witness narrating her ordeal in the hands of her father. Moral character is immaterial in the prosecution and conviction of persons accused of rape, as even prostitutes can be the victims of rape.[94] Moreover, we recognize that a rape victim’s testimony against her father is entitled to great weight, since reverence and respect for elders is deeply ingrained in Filipino children and is recognized by law.[95]

Under the threat of the knife and the shock of being violated by her own father, even a grown-up like Cheril cannot be expected to put up a fight. Physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist’s lust because of fear for life and personal safety.[96]

With regard to the alleged motive of the complainant in pinning her father down for grievances in the past, we find that the same has been sufficiently debunked by Cheril in her testimony, thus:

COURT:

Q

Miss Witness, the Court wanted to be cleared about your statement that you entertained some hatred from your father because of abandoning you when you were still young?

My question to you is, is that not the reason why you are now charging your father with so heinous a crime?

WITNESS:

A

No, sir.

Q

Now, your charge against your father, if he will be found guilty by this Court, he will die by lethal injection. As a daughter unto your father, tell the Court frankly, did he really [do] this to you or he did not?

A

He did it, sir.

Q

Were you aware of those rape victims who were meted to die in the electric chair that all the families were trying to picket Malacañang only to ask for forgiveness that their father or cousin will not be meted death in the electric chair?

A

Yes, sir.

Q

Now, again, I will ask you and swear to God and to this Court, is it really true that your father did this to you?

A

Yes. Sir.

Q

Will you not be disturbed by your conscience that in the event that your father will be convicted, he will be meted to die by lethal injection thru your hand?

A

No. sir.

Q

Is it not that you filed this charge against your father through the proddings of your mother because your mother hated your father very much [for] leaving her to live [with] other women?

A

No. sir.

PROSECUTOR JOVEN:

May we just manifest, your Honor, on our observation that the witness in answering, she is [teary-eyed]. (TSN, March 29, 2000, p.46)

COURT:

Yes, I know.

Proceed.

ATTY. RONQUILLO:

Q

Do you also realize that if it will be found out that you are falsely testifying against your father, you will also be strictly penalized in accordance with law?

WITNESS:

A

Yes, sir.

COURT:

Q

With all these things that your father did to you, and as a daughter who loves and needs a father, can you not forgive him?

WITNESS:

A

No, sir. I don't need a father who is like a beast.

COURT:

Proceed.

ATTY. RONQUILLO:

Q

You are a brave and intelligent girl, why is it that during those times, September 3, 4 and 5, you never tried to stop your father from what he allegedly did to you?

WITNESS:

A

I reported but only to my cousin, no other else, ma'am.

Q

With your intelligence and as I said that [you're] very brave, why did you not try to stop your father from what he did to you, you are intelligent, brave and capable?

A

How could I stop him when he was threatening me. I could not even find a knife or bolo to [defend] myself, I could not find anything.

COURT:

Make of record that the witness is crying.[97]

The foregoing shows that Cheril understood the severity of her charges and that its consequences could be irreversible. Notwithstanding the possibility that her imputations could lead to her father's death, Cheril did not waver in her desire to have the transgressions against her vindicated. It would be the height of depravity for a young woman to concoct a story that would put her own father for most of his remaining life in jail, if not to death, and drag herself and her family to a lifetime of shame.[98]

On the contention that Cheril filed the rape charges upon the prompting of her mother, we believe that a mother would not expose her own daughter to the ignominy of a rape trial merely to retaliate against her husband for his transgressions as a family man.[99] It is inconceivable that a mother would stoop that low just to assuage her own hurt feelings.[100] As shown earlier, Cheril is a grown woman who fully understood the consequences of her imputations. She knew the gravity of the penalty of death faced by her father should he be found guilty. Furthermore, in *People v. Cepeda*,[101] we took cognizance of the fact that in our rural areas, women by custom and tradition act with circumspection and prudence, and great caution is observed so that their reputation remains untainted.

With regard to the presence of old lacerations testified to by the doctor as probably being about one month old, we reiterate that a medical examination is not indispensable for the successful prosecution of the crime of rape, and the presence of healed hymenal lacerations does not negate the commission of rape.[102] A freshly broken hymen is not an essential element of rape.[103]

Coming now to appellant's alibi, we must point out that based on appellant's narration, he testified that he was in Sudlon gathering copra from around 7:00 a.m.[104] of September 3, 1999 up to the afternoon of September 4, 1999.[105] Thus, his alibi only covered his whereabouts for the second incident of rape which happened at 1:00 a.m. of September 4, 1999. Thus, even assuming *arguendo* that we believe his alibi, the same still shows that he was in the same house as Cheril at 1:00 a.m. of September 3, 1999 and 1:00 a.m. of September 5, 1999.

It is to be noted, however, that even his alibi for the second incident of rape does not hold water in view of the fact that it does not satisfy the requirements of time and place. He needed to satisfy the court, not only that he was somewhere else at the time the rape occurred, but also that he was so far away that it was physically impossible for him to be present at the scene of the crime or its immediate vicinity at the time of its commission.[106]

As found by the trial court, Sudlon is only 8 kilometers from the poblacion of Barobo.[107] It was not altogether impossible for appellant to go home to Barobo on the night in question as he had all the means of transportation available for him including buses, jeepneys, single passenger motorcycles and tricycles plying the route between the two places.

Although appellant stresses that his alibi was corroborated by Alberto Polancos, the latter was only with appellant until 10:00 p.m. of September 3, 1999.[108] Thus, at the time in question, that is, 1:00 p.m. of September 4, 1999, Alberto Polancos' testimony does not help appellant's cause at all. We also do not look with favor upon Celestino Umbaña's testimony. Although he testified that he was together with appellant the whole night of September 3, 1999 up to the morning of September 4, 1999, and that they slept side by side, we find the same testimony to be biased. Where the appellant's alibi is established only by himself and by his relative, his denial of culpability does not deserve consideration in the face of the affirmative testimony of a credible prosecution witness.[109]

Thus, we agree with the trial court that appellant's alibi was not sufficiently corroborated and that he was indeed

in Barobo when the three rape incidents were alleged to have occurred.

Unavailing, too, is appellant's defense of denial. All we have are the bare and uncorroborated protestations of appellant that he did not rape his daughter. No evidence was adduced to support it. Like the defense of alibi, denial is inherently a weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and has practically no evidentiary value.[110]

Evaluating appellant's defenses of denial and alibi, as against the positive identification and credible testimony of the complainant, we find the twin defenses lame and undeserving any weight in law. On the other hand, Cheril's testimony hurdled the test of credibility, and is sufficient basis to convict appellant for the crimes of rape.

(2) On the Propriety of the Death Penalty

Anent the imposition of the death penalty, both appellant and appellee agree that the trial court erred in this aspect.

Under Article 266-B of the Revised Penal Code, when the rape is committed with the use of a deadly weapon, the imposable penalty is reclusion perpetua to death. In relation to Article 63 of the same Code, it is provided that where the penalty prescribed by law is composed of two indivisible penalties, and there are neither mitigating nor aggravating circumstances in the commission of the crime, the lesser penalty shall be imposed.

In imposing the death penalty, the trial court reasoned:

In the case at bar, the accused Gaudencio Umbaña committed rape to his daughter, Cheril Umbaña with the use of a bladed weapon, not to mention his moral ascendancy and influence over that of his daughter Cheril, a 20 year old lady, the former has to suffer the maximum penalty of death in each count of rape.[111]

We agree with appellant that *People vs. Sagarino*[112] finds application in the case at bar. We there stated:

We now come to the propriety of the penalties imposed on appellant. Section 11 of Republic Act 7659, which amended article 335 of the Revised Penal Code, imposes the penalty of reclusion perpetua when the rape was committed with force and intimidation. But the imposable penalty becomes reclusion perpetua to death whenever the rape is committed with the use of a deadly weapon. Such is the situation in Criminal Case Nos. 98-551 and 98-552 because the use of a knife or a bladed weapon by appellant in the consummation of the two rapes has been alleged and proved.

However, we are unable to sustain the death penalty imposed on appellant in both cases. As provided in Section 8 of Rule 110 of the Rules of Criminal Procedure, effective December 1, 2000, but applicable to these cases now, the complaint or information must not only state the designation of the offense given by statute and aver the acts or omissions constituting the offense, but also "specify its qualifying and aggravating circumstances." But here the informations against appellant in both cases show no specification of circumstances that aggravate the offenses charged. Note that the close relationship between the victim and the offender (mother and son) is alleged, but nothing is stated in the informations concerning pertinent circumstances (such as disregard of the filial respect due the victim by reason of her age, sex and rank) that could aggravate the crimes and justify imposing the death sentence. Thus, absent any aggravating circumstance specifically alleged and proved in the two rape cases, the penalty imposable on appellant for each offense is not death but only the lesser penalty of reclusion perpetua.

Article 266-B of the Revised Penal Code states the specific aggravating/qualifying circumstances. Other than the use of a deadly weapon, which is already taken into account to raise the penalty to reclusion perpetua to death, not one of these circumstances was alleged or proved in the case at bar.[113] Hence, the penalty imposable is only reclusion perpetua.

(3) On the Damages Awarded

With the reduction of the penalty, the civil indemnity for each count of rape should correspondingly be reduced from P75,000 to P50,000.

The award of P50,000 as moral damages for each count of rape is correct. Even without allegation or proof of the trauma constituting the basis for the award, the same is necessarily included in a conviction of rape.[114]

Jurisprudence dictates that the amount of exemplary damages awarded should be reduced to P25,000 for each count of rape, because of the presence of only one aggravating circumstance, the use of a deadly weapon.

WHEREFORE, the Judgment of the Regional Trial Court of Lianga, Branch 28, of Surigao del Sur, in Criminal Cases Nos. L-1614, L-1615 and L-1616 is AFFIRMED insofar as it finds appellant Gaudencio Umbaña GUILTY of three counts of rape, ordering him to pay P50,000 as moral damages for each count of rape, with the MODIFICATIONS that the death sentences imposed are reduced to reclusion perpetua, and the amount of civil indemnity is reduced to P50,000 for each count of rape, and that of exemplary damages is reduced to P25,000 for each count of rape. Costs de oficio.

SO ORDERED.

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

[1] Rollo, pp. 71-88; Criminal Cases Nos. L-1614, L-1615 and L-1616.

[2] Rollo, p. 5.

[3] Id., at 7.

[4] Id., at 9.

[5] TSN, July 27, 2000.

[6] Id., at 15-19.

[7] Id., at 20-22.

[8] Id., at 22-23.

[9] Id., at 24-25.

[10] TSN, March 29, 2000, pp. 9-47.

[11] Id., at 30.

[12] Id., at 27-28.

[13] Id., at 44.

[14] Id., at 24-25.

[15] Id., at 25.

[16] Id., at 15.

[17] Id., at 10.

[18] Id., at 11.

- [19] *Id.*, at 12.
- [20] *Id.*, at 11.
- [21] *Id.*, at 12.
- [22] *Id.*, at 13.
- [23] *Id.*, at 14.
- [24] *Id.*, at 15.
- [25] *Id.*, at 16.
- [26] *Id.*, at 17-21.
- [27] *Id.*, at 18-19.
- [28] *Id.*, at 19, 21.
- [29] *Id.*, at 35.
- [30] *Id.*, at 35-36.
- [31] *Id.*, at 36.
- [32] *Ibid.*
- [33] *Id.*, at 37.
- [34] *Id.*, at 38.
- [35] *Id.*, at 40.
- [36] *Id.*, at 41.
- [37] *Id.*, at 42.
- [38] *Id.*, at 26.
- [39] *Id.*, at 27.
- [40] *Id.*, at 30.
- [41] *Id.*, at 22.
- [42] *Id.*, at 23.
- [43] *Id.*, at 24.
- [44] Records, p. 7.
- [45] TSN, March 29, 2000, pp. 2-6.
- [46] *Id.*, at 5.
- [47] *Id.*, at 6.
- [48] TSN, July 27, 2000, pp. 3-40.
- [49] *Id.*, at 25-26.

- [50] *Id.*, at 26-28.
- [51] *Id.*, at 30.
- [52] *Id.*, at 30-31.
- [53] *Id.*, at 6.
- [54] *Id.*, at 6-7.
- [55] *Id.*, at 6.
- [56] *Id.*, at 8.
- [57] *Ibid.*
- [58] *Id.*, at 9.
- [59] *Id.*, at 9.
- [60] *Id.*, at 10.
- [61] *Id.*, at 11.
- [62] *Ibid.*
- [63] *Id.*, at 12-14.
- [64] *Id.*, at 36.
- [65] *Id.*, at 37.
- [66] TSN, September 27, 2000, pp. 41-60.
- [67] *Id.*, at 43-44.
- [68] *Id.*, at 45.
- [69] *Id.*, at 46-48, 51-52.
- [70] TSN, September 28, 2000, pp. 62-84.
- [71] *Id.*, at 67-68.
- [72] *Id.*, at 68-70.
- [73] *Id.*, at 71-73.
- [74] *Id.*, at 74-75.
- [75] *Id.*, at 76-77.
- [76] TSN, September 28, 2000, pp. 88-105.
- [77] *Id.*, at 89.
- [78] *Id.*, at 90-91.
- [79] *Id.*, at 92-93.
- [80] *Id.*, at 93.

- [81] *Id.*, at 94.
- [82] *Id.*, at 100-101.
- [83] *Id.*, at 103.
- [84] *Supra*, note 1 at 34-35.
- [85] Appellant's Brief; Rollo, pp. 54-55.
- [86] *Id.*, at 63.
- [87] *Id.*, at 64.
- [88] *Id.*, at 64-65.
- [89] Rollo, p. 116.
- [90] *People vs. Ochea*, G.R. Nos. 146452-53, December 10, 2002, p. 8.
- [91] Rollo, pp. 83-84.
- [92] *People vs. Adrales*, 322 SCRA 424, 435 (2000).
- [93] *People vs. Antonio*, G.R. No. 118311, February 19, 1999, pp. 13-14; citing *People vs. Llaguno*, 285 SCRA 124, 135 (1998).
- [94] *People v. Alcartado*, 334 SCRA 701, 717-718 (2000).
- [95] *People v. Docena*, 322 SCRA 820, 830 (2000).
- [96] *People v. Cula*, 329 SCRA 101, 113 (2000).
- [97] TSN, March 29, 2000, pp. 45-47 (Emphasis ours).
- [98] *People v. Bayona*, 327 SCRA 190, 199 (2000).
- [99] *People v. Burce*, 269 SCRA 293, 312-313 (1997); citing *People v. Rejano*, 237 SCRA 627, 642 (1994).
- [100] *Ibid.*

[101] 324 SCRA 290, 298 (2000).

- [102] *People v. Licanda*, 331 SCRA 357, 370-371 (2000).
- [103] *People v. Llambo*, 323 SCRA 791, 804 (2000).
- [104] "After breakfast."
- [105] TSN, July 27, 2000, pp. 5, 8-9.
- [106] *People v. Alib*, 322 SCRA 93, 100 (2000).
- [107] Rollo, p. 32.
- [108] TSN, September 27, 2000, pp. 46-48.
- [109] *People v. Legaspi*, 331 SCRA 95, 114 (2000).
- [110] *People v. Arlee*, 323 SCRA 201, 214 (2000).

[111] Rollo, p. 87.

[112] G.R. Nos. 135356-58, September 4, 2001.

[113] Art. 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of rape, the victim has become insane, the penalty shall be reclusion perpetua to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1)

When 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.

2)

When the victim is under the custody of the police or military authorities or any law enforcement or penal institution.

3)

When the rape is committed in full view of the spouse, any of the children or other relatives within the third civil degree of consanguinity.

4)

When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime.

5)

When the victim is a child below seven (7) years old.

6)

When the offender knows he is afflicted with the Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim.

7)

When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime.

8)

When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability.

9)

When the offender knew of the pregnancy of the offended party at the time of the commission of the crime.

10)

When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

[114] *People v. Yonto*, G.R. Nos. 148917-18, November 21, 2002, p. 7.

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