

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. HERMENIO (HERMINIO) CANOY, APPELLANT.*G.R. Nos. 148139-43. October 15, 2003*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-148139-43/>**PER CURIAM:**

Den Canoy is the eldest of four (4) children of the spouses Rebecca Roche and accused Hermenio[1] Canoy. Den was born on 29 December 1982 as shown by her birth certificate.[2] Her father worked as a welder at the Philippine Phosphate Fertilizer Corporation (PHILPHOS) while her mother was a plain housewife. Together with her brothers Christopher and Jake and sister Richie, the family lived in a one (1)-storey house in Brgy. Libertad, Isabel, Leyte.

In 1994, Den occupied one of the two (2) bedrooms of the house with her father, mother and younger sister, while her two (2) brothers shared the other room. One evening that year Den woke up to find her father, who usually slept next to her, inserting his finger into her vagina. She felt pain but did not resist; instead, she cried and uttered "Pa don't, its painful." [3] Her mother and sister were unaware of what was happening as they were both sound asleep. The next day she did not reveal what occurred to her to her mother. When she did so months later, her mother would not believe her.

One evening in the summer of 1996, while everyone was sleeping, her father removed her short pants and underwear and then his own short pants and brief, and mounted her. He touched her breast and placed his penis on top of her vagina. Again, she simply cried and did not repel the aggression. She was in grade six (6) at that time. When her father finished abusing her, he warned her not to tell her mother or their family would be torn apart. Den did as she was told and kept the whole incident to herself.

Subsequently, another bedroom was added to their house, which was to be occupied by her father. In 1998, Karen and Liezel, Herminio Canoy's illegitimate daughters and Den's half sisters, came to live with them in Brgy. Isabel. Sometime in April 1998, at about six o'clock in the morning, her father told her mother to buy bread. While her mother was away, he called Den to his room and undressed her. Her mother, who found the bakery still closed at that hour, unexpectedly returned and walked into her husband's room just as he was removing Den's panty and was staring at her vagina. When asked what he was doing to their daughter, Herminio answered that he just wanted to see Den's vagina as she was already a lady. While her parents quarreled, Den could do nothing but cry.

At about nine o'clock that same morning, Rebecca who was exasperated with her husband, left for Cebu taking Den with her. The two (2) stayed with Rebecca's sister. There Den confided again to her mother the perverted acts of her father but the latter could not do anything. In fact, when they returned to Brgy. Libertad two (2) weeks later, her parents reconciled and continued to live together.

In the morning of 31 May 1998 the accused sent his wife to the market accompanied by their sons. He then called Den inside his room after she finished cooking for him. He held her arms and led her to his room after which he proceeded to remove his daughter's pants and underwear and touched her body. He made her lie down and removed his pants and brief and inserted his penis into her vagina. Cowed by her fear of him, Den did not

complain nor resist him. She did not utter any word. She could only weep in pain.

Her father stayed on top of her for some time but removed his penis when he was about to ejaculate. His lust sated, he put on Den's clothes and again warned her not to tell anyone otherwise there would be trouble. Thus, Den kept her silence when her mother arrived home at lunchtime. Den was reluctant to tell anyone about the ordeal she suffered in the hands of her father because of fear. Den described him as being *isog* - a term in her dialect, which means brave, temperamental and belligerent.[4] He also maltreated her and her siblings by frequently boxing, slapping, kicking and whipping them.

From the 16th to the 18th of February 1999 Den did not return home from school. Her mother had to look for her only to find her with one of her classmates. It was also that time when Den's teachers called for her mother and informed her that Den had revealed to them that she was raped by her father several times.

Rebecca then confronted her husband but he completely denied Den's accusations. Upon the advice of Den's teachers, Rebecca allowed Den to stay with her aunt but her father found this out and took her home. Sadly, Rebecca failed to report the matter to the barangay captain or to any of her relatives and made no other move to protect her daughter from her husband.

On 20 February 1999, Den was again subjected to her father's lechery. It was about nine o'clock in the evening when Den found herself alone with her father in his room. He pulled her body, touched her breasts and thereafter removed her shorts and panty.

When she protested, he pinched her back causing the skin to bleed. Her father succeeded in inserting his penis into her vagina while she cried and tried her best to ease the pain. He was on top of her for quite some time until he ejaculated outside her vagina. Once again, he reminded her not to tell her mother to avoid trouble.

Finally, unable to bear her father's abuses and finding no help from her mother, Den went alone to the Department of Social Work and Development on 24 February 1999 to report the molestations of her father. She was examined by the Municipal Health Officer of Isabel, Dr. Refelina Cerillo, that same day and was found to have an erythema at the mid-proximal part of the posterior chest and hymenal lacerations at the seven (7), ten (10) and eleven (11) o'clock positions.[5] The examining physician was positive that she had had previous sexual intercourse or previous trauma.[6]

On 26 February 1999 Den reported her father's abuses to the police authorities of Isabel.[7] Soon after, five (5) Informations were filed before the Regional Trial Court of Ormoc City against Herminio Canoy:[8] for the act of inserting a finger inside Den's vagina which occurred in 1996 he was charged with Acts of Lasciviousness (Crim. Case No. 5603-0); for the incident which occurred in April 1998, he was charged with Attempted Rape (Crim. Case No. 5601-0); for the qualified rape incident which occurred in the summer of 1996 (Crim. Case No. 5602-0); for the qualified rape of 31 May 1998 (Crim. Case No. 5600-0); and, for the qualified rape of 20 February 1998 (Crim. Case No. 5599-0).

After arraignment, the trial court conducted a joint trial on the merits. The prosecution presented Dr. Refelina Cerilla, Municipal Health Officer of Isabel; SPO1 Lamberto Matuguina, Jr., property custodian and designated female officer of the PNP in Isabel; Rebecca Canoy, mother of Den; Julieta Gubalane, Municipal Civil Registrar, and Den Canoy, the victim.

The defense was denial and alibi. Accused claimed that Den merely fabricated the charges to get back at him for the frequent beatings he gave her; for scolding her when she skipped classes and did not come home for three (3) days; and for allowing his illegitimate daughters to live with them. He presented as his witnesses his illegitimate daughter Liezel Canoy and his brother Gilbert Canoy as well as Ricardo Bargo, Personnel Supervisor of

PHILPHOS, who was the time-keeper of the rank-and-file employees.

In its joint Decision[9] of 9 February 2001 the trial court found the accused guilty of Acts of Lasciviousness in Crim. Case No. 5603-0, Acts of Lasciviousness in Crim. Case No. 5601-0 instead of Attempted Rape, and Acts of Lasciviousness also in Crim. Case No. 5602-0 instead of Qualified Rape as charged in the Information. The trial court found him guilty only of the crimes of Acts of Lasciviousness instead of as charged in the Information, after finding that the circumstances obtaining in both cases did not show that there was any intent to have sexual intercourse; in Crim. Case No. 5601-0, he was fully dressed and was found to have been only gazing at his daughter's vagina, while in Crim. Case No. 5602-0, he merely placed his genitals on top of the victim's. In each of these cases, the court a quo imposed an indeterminate sentence of two (2) months and one (1) day of arresto mayor minimum as minimum, to six (6) months and one (1) day of prision correccional minimum as maximum, and pay the victim, Den Canoy, P20,000.00 as indemnity and P20,000.00 as moral damages.[10]

The trial court also convicted the accused of two (2) counts of Qualified Rape in Crim. Cases Nos. 6500-0 and 5599-0 and sentenced him to death in each case and to pay the victim P50,000.00 as indemnity and another P50,000.00 as moral damages also in each case.[11]

In assailing the Decision of the court a quo, appellant Hermenio Canoy insists that the evidence of the prosecution is weak and insufficient to establish his guilt for all the five (5) cases. Noting that the conviction of the trial court is grounded primarily on the testimony of the complaining witness, appellant now endeavors to show the contradictions and inconsistencies in her statements which, he contends, undermine her credibility.

First, appellant points out that with respect to the incident in the summer of 1996, which was the subject of Crim. Case No. 5602-0, Den Canoy testified on 2 March 2000 that appellant had already inserted his penis into her vagina. Yet, she testified on 3 April 2000 that he merely placed his penis on top of her vagina. Second, appellant observes that Den gave several conflicting statements as to their sleeping arrangement in 1998 and the exact room where the sexual molestation took place in 1996. Third, he directs our attention to the conduct of the complainant after she was molested on the evening of 20 February 1999, observing that according to her she mingled normally with her family shortly after she was defiled by her father. Appellant argues that such conduct is improbable following a traumatic ordeal and tends to show the falsity of his daughter's accusations.

The contentions of appellant have no merit, for which reason his conviction must be affirmed. It is a long-settled rule in criminal jurisprudence that when the issue is one of credibility of witnesses, an appellate court will normally not disturb the factual findings of the trial court[12] in the absence of a clear showing that the court had failed to appreciate facts and circumstances which if taken into account, would materially affect the result of the case.[13] The trial court's evaluation of the testimonies of witnesses is accorded great respect because it had the opportunity to observe the demeanor and conduct of witnesses on the stand.[14]

In the case before us, we find no satisfactory factual basis that would move us to doubt the trustworthiness of the complainant's recital as to abandon the findings of the trial court. The supposed inconsistencies in the testimonies of the complainant cited by the appellant refer to minor and peripheral details which do not go into the elements of the crime. It is an oft-repeated rule in criminal cases that minor inconsistencies in the statement of a witness do not affect his credibility.[15] On the contrary, they strengthen rather than weaken the witness' credibility as they erase any suspicion of a rehearsed testimony.[16]

As to the first specified inconsistent or contradictory statements, we believe that the complainant merely corrected an earlier inaccurate account when she declared that her father placed his organ on top of hers and did not insert it during the 1996 incident. Rather than evincing a falsehood as appellant suggests, we believe that the inconsistency does not detract from the veracity of her whole narration. We recognize that the complainant had to testify on

several incidents of molestations which occurred on separate occasions. Considering her state of distress at having to recount each incident during trial, it is not unusual that she would confuse the details of one incident for another. This Court has held that error-free testimony cannot be expected of a rape victim for she may not be able to remember and recount every ugly detail of the harrowing experience and the appalling outrage she went through especially so since she might in fact be trying not to recall the same, as they are too traumatic and painful to remember.[17] Lapses in the testimony of the witness should be expected especially when the case involves a victim who has been subjected to multiple rapes at a tender age.

Moreover, Den's clarification that no penetration occurred at this time was consistent with the declarations she made in her sworn statement[18] before the police investigator dated 26 February 1999. This bolsters the inference that the complainant merely had a difficult time recollecting the particulars of her ordeal.

As regards the alleged inconsistencies in complainant's testimony on their sleeping arrangement, we find them to be totally inconsequential. The debate as to the where the occupants of the house slept cannot negate the testimonies of the prosecution witnesses which have been consistent on the fact that the victim slept next to the appellant in 1996 when he committed the sexual abuses. Nor do they find any relevance to the unlawful acts committed in 1998 and 1999 that were perpetrated during daytime or before the family went to sleep.

Appellant contends that the demeanor of the complainant in the aftermath of the rape of 20 February 1999 was inconsistent with normal human conduct and behavior. We have repeatedly ruled that different people react differently to the same situation, and not every victim of a crime can be expected to act reasonably and conformably to the expectations of everyone.[19] It is not therefore unusual for the victim to normally carry on after half an hour of the sexual molestation, particularly since she had been cautioned by her father not to squeal to her mother to avoid trouble. Furthermore, an examination of the testimony of the victim also showed that while she may have taken her dinner with the rest of her family without displaying any peculiar reaction, she admitted she was "mad" at her father for what he had done to her earlier.[20]

We must brush aside as flimsy the appellant's insistence that the charges were merely concocted by his daughter to punish him for bringing in his illegitimate daughters to live with them and for maltreating her. It is unthinkable for a daughter to accuse her own father, to submit herself for examination of her most intimate parts, put her life to public scrutiny and expose herself, along with her family, to shame, pity or even ridicule not just for a simple offense but for a crime so serious that could mean the death sentence to the very person to whom she owes her life,[21] had she really not have been aggrieved.[22] Nor do we believe that the victim would fabricate a story of rape simply because she wanted to exact revenge against her father, appellant herein, for allegedly scolding and maltreating her.

The trial court correctly disregarded appellant's defense of denial and alibi as these cannot prevail over the positive and categorical declarations of his daughter indicting him for the crimes. Besides, the alibi of his being at his place of work does not inspire belief as it did not preclude the possibility of his being at the crime scene at the time the molestations occurred since the distance between his house and his workplace was only six (6) kilometers and travel time between these places was just 30 minutes by bus.[23] As we have repeatedly held, for alibi to prevail, the accused must establish by clear and positive evidence that it was physically impossible for him to have been at the scene of the crime when it happened, not merely that he was somewhere else.[24]

As for Den, she gave a clear and candid narration of how the sexual transgressions were committed. Her truthfulness is more than manifest in her comportment during the trial. The record shows that she broke down and cried on the witness stand while recounting the details of the dastardly acts her father perpetrated upon her, prompting the court to call a recess to enable her to recover her composure and later to order a continuance so that

her examination had to be continued on another date. Also serving to reinforce her story are the medical report and the testimony of the examining physician who found healed lacerations in her hymen and an erythema on her back which is consistent with her testimony that appellant pinched her back during the last sexual abuse.

We find the evidence presented by the prosecution to be adequate to support the conviction of appellant for the three (3) counts of Acts of Lasciviousness in Crim. Cases Nos. 5603-0, 5601-0 and 5602-0 and thus affirm the indeterminate sentence of two (2) months and one (1) day of *arresto mayor* minimum as minimum, to six (6) months and one (1) day of *prision correccional* minimum as maximum imposed by the trial court in each case.

The guilt of the appellant was likewise proved beyond reasonable doubt for the rapes committed on 31 May 1998 and 20 February 1999 which are the subject of Crim. Cases Nos. 6500 and 5599-O. Under Sec. 11 of RA 7659, however, the qualifying circumstances of minority and the relationship between the accused and the victim must be specifically alleged in the Informations and duly proved during the trial with equal certainty as the crime itself to warrant the imposition of the death penalty.

In this case, the Informations for Crim. Cases Nos. 6500-0 and 5599-0 alleged that the complainant was sixteen (16) years old at the time of the commission of the offenses and the daughter of the appellant. During trial, the prosecution presented a birth certificate proving that Den was born on 29 December 1982 and so was only fifteen (15) years old on 31 May 1998 and sixteen (16) years old on 20 February 1999. The same birth certificate also shows that appellant is the father of the complainant. In addition, the appellant admitted at the pre-trial conference that Den was his daughter. Accordingly, the imposition of the death penalty upon the appellant in Crim. Cases Nos. 6500-0 and 5599-0 is proper.

As for damages, this Court affirms the award of P20,000.00 in moral damages for each count of Acts of Lasciviousness pursuant to Art. 2219 of the New Civil Code but the award of P20,000.00 in civil indemnity is deleted for want of legal basis.

In line with recent jurisprudence on qualified rape, we increase the civil indemnity and moral damages. Den Canoy is entitled to P75,000.00 in civil indemnity[25] and another P75,000.00 as moral damages[26] for each count of rape considering that the crime was committed under circumstances justifying the death penalty. Exemplary damages in each case of rape at P25,000.00 must likewise be awarded to deter other fathers with perverse or aberrant sexual behavior from sexually abusing their daughters.[27]

Three (3) members of this Court, although maintaining their adherence to the separate opinions expressed in *People v. Echegaray* that RA 7659, insofar as it prescribes the penalty of death, is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

WHEREFORE, the joint Decision of the court *a quo* finding appellant Herminio (Herminio) Canoy guilty of three (3) counts of Acts of Lasciviousness in Crim. Cases Nos. 5601-0, 5602-0 and 5603-0 and sentencing him to suffer the indeterminate term of two (2) months and one (1) day of *arresto mayor* minimum as minimum, to six (6) months and one (1) day of *prision correccional* minimum as maximum for each count of Acts of Lasciviousness, and of two (2) counts of Qualified Rape in Crim. Cases Nos. 6500-0 and 5599-0 and sentencing him to suffer the supreme penalty of death for each count of qualified rape is **AFFIRMED** with the following MODIFICATIONS:

(a) In Crim. Cases Nos. 5601-0, 5602-0 and 5603-0, the appellant is ordered to pay the complaining witness only moral damages in the amount of P20,000.00 for each count of Acts of Lasciviousness; and

(b) In Crim. Cases Nos. 6500-0 and 5599-0, the appellant is ordered to pay the complaining witness p75,000.00 as

civil indemnity, another P75,000.00 as moral damages, and an additional amount of p25,000.00 as exemplary damages for each count of Qualified Rape.

In accordance with Art. 83 of The Revised Penal Code, as amended by RA 7659, Sec. 25, upon finality of this Decision, let certified true copies of the records of these cases be forwarded to the President of the Philippines for the possible exercise of her pardoning power.

SO ORDERED.

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

[1] Also spelled "Herminio."

[2] Exh. "B," "later re-marked Exh. "C;" Records, p. 196.

[3] TSN, 2 March 2000, p. 14.

[4] Id., p. 15.

[5] TSN, 17 January 2000, pp. 11-12, 13-14.

[6] Id., p. 14-A.

[7] Records, p. 197.

[8] Ruffled to Branch 35.

[9] Penned by Judge Fortunito L. Madrona, RTC-Br. 35, Ormoc City.

[10] Decision, pp. 16-17; Rollo, pp. 35-36.

[11] Ibid.

[12] People v. Agliday, G.R. No. 140794, 16 October 2001, 367 SCRA 273.

[13] People v. Samson, G.R. No.133437, 16 November 2001, 369 SCRA 229.

[14] People v. Rapisora, G.R. Nos. 140934-35, 23 October 2001, 368 SCRA 170; People v. Jalosjos, G.R. Nos. 132875-76, 16 November 2001, 369 SCRA 179.

[15] People v. Nardo, G.R. No. 133888, 1 March 2001, 353 SCRA 339; People v. Tamsi, G.R. Nos. 142928-29, 11 September 2002.

[16] People v. Alfeche, G.R. No. 124213, 17 August 1998, 294 SCRA 352; People v. Mataro, G.R. No. 130378, 8 March 2001, 354 SCRA 27.

[17] People v. Callos, G.R. Nos. 123913-14, 11 October 2001, 367 SCRA 141; People v. Aguero, Jr., G.R. No. 139410, 20 September 2001, 365 SCRA 503.

[18] Records, pp. 7-11.

[19] People v. Cabel, G.R. No. 121508, 4 December 1997, 282 SCRA 410.

[20] TSN, 3 April 2000, p. 70.

[21] People v. Masalihit, G.R. No. 124329, 14 December 1998, 300 SCRA 147.

[22] People v. Bernaldez, G.R. Nos. 132779-82, 19 January 2000, 322 SCRA 462

[23] TSN, 13 September 2000, pp. 18-19.

[24] People v. Padoa, G.R. Nos. 140734-35, 11 September 2002.

[25] People v. Escano, G.R. Nos. 140218-23, 13 February 2002; People v. Arizapa, G.R. No. 131814, 15 March 2000, 328 SCRA 214.

[26] People v. Soriano, G.R. Nos. 142779-95, 29 August 2002; People v. Sambrano. G.R. No. 143708, 24 February 2003.

[27] People v. Agustin, G.R. Nos. 135524-25, 24 September 2001, 365 SCRA 667; People v. Montemayor, G.R. Nos. 124474 and 139972-78, 28 January 2003.

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