

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARIO ODEN, APPELLANT.

G.R. Nos. 155511-22. April 14, 2004

Ponente: VITUG, J.

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VITUG, J.:

The Court is confronted with yet another case where a home ceases being an abode of safety and protection, this time to a motherless daughter who has accused her own father, herein appellant, of having repeatedly had carnal knowledge of her “by means of force and intimidation.”

Appellant Mario Oden was charged with twelve (12) counts of “rape,” defined and penalized under Article 266-A, paragraph 1, in relation to Article 266-B, sixth paragraph of No. 1, of the Revised Penal Code, as amended by Section 5(b) of Republic Act No. 7610, Republic Act No. 8353, and Section 5(a) of Republic Act No. 8369, before the Regional Trial Court of Antipolo City. The corresponding Informations were docketed Criminal Case No. 01-20356, Case No. 01-20724 to Case No. 34, inclusive.

“Criminal Case No. 01-20356

“That on or about the 8th day of January 2001, in the City of Antipolo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one Anna Liza Oden y Ailes, who is [his] daughter and a fifteen year old minor, against the latter’s will and consent.

‘CONTRARY TO LAW.’

“Criminal Case No. 01-20724

‘That on or about the 9th day of November 2000, in the City of Antipolo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one Anna Liza Oden y Ailes, who is [his] daughter and a fifteen year old minor, against the latter’s will and consent.

‘CONTRARY TO LAW.’

“Criminal Case No. 01-20725

‘That on or about the 25th day of December 2000, in the City of Antipolo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one Anna Liza Oden y Ailes, who is his daughter and a fifteen year old minor, against the latter’s will and consent.

‘CONTRARY TO LAW.’

“Criminal Case No. 01-20726

‘That on or about the 8th day of November 2000, in the City of Antipolo, Philippines, and within the

jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one Anna Liza Oden y Ailes, who is his daughter and a fifteen year old minor, against the latter's will and consent.

`CONTRARY TO LAW.'

"Criminal Case No. 01-20727

`That on or about the 3rd day of November 2000, in the City of Antipolo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one Anna Liza Oden y Ailes, who is his daughter and a fifteen year old minor, against the latter's will and consent.

`CONTRARY TO LAW.'

"Criminal Case No. 01-20728

`That on or about the 17th day of October 2000, in the City of Antipolo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one Anna Liza Oden y Ailes, who is his daughter and a fifteen year old minor, against the latter's will and consent.

`CONTRARY TO LAW.'

"Criminal Case No. 01-20729

`That on or about the 16th day of October 2000, in the City of Antipolo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one Anna Liza Oden y Ailes, who is his daughter and a fifteen year old minor, against the latter's will and consent.

`CONTRARY TO LAW.'

"Criminal Case No. 01-20730

`That on or about the 15th day of October 2000, in the City of Antipolo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one Anna Liza Oden y Ailes, who is his daughter and a fifteen year old minor, against the latter's will and consent.

`CONTRARY TO LAW.'

"Criminal Case No. 01-20731

`That on or about the 12th day of September 2000, in the City of Antipolo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one Anna Liza Oden y Ailes, who is his daughter and a fifteen year old minor, against the latter's will and consent.

`CONTRARY TO LAW.'

"Criminal Case No. 01-20732

`That on or about the 11th day of September 2000, in the City of Antipolo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one Anna Liza Oden y Ailes, who is his daughter and a fifteen year old minor, against the latter's will and consent.

‘CONTRARY TO LAW.’

“Criminal Case No. 01-20733

‘That on or about the 26th day of August 2000, in the City of Antipolo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one Anna Liza Oden y Ailes, who is his daughter and a fifteen year old minor, against the latter’s will and consent.

‘CONTRARY TO LAW.’

“Criminal Case No. 01-20734

‘That on or about the 10th day of September 2000, in the City of Antipolo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one Anna Liza Oden y Ailes, who is his daughter and a fifteen year old minor, against the latter’s will and consent.

‘CONTRARY TO LAW.’”[1]

On his arraignment, appellant, assisted by counsel de oficio, Atty. Harley Padolina of the Public Attorney’s Office (PAO), pleaded “guilty” to the charges.

The Solicitor General summed up the case for the prosecution; viz:

“Private complainant Anna Liza Oden is a fifteen (15) year old girl who lived with her siblings and father x x x at Senora Dela Paz, Brgy. Sta. Cruz, Antipolo City. Her mother [has] already [passed away].

“On 26 August 2000, about 2:00 o’clock in the morning, Anna Liza - - then only about fourteen (14) years old - - was sleeping with her younger sister in bed, when her father woke her up. Accused told her that he is going to ‘use’ her for a while. Hurriedly, he undressed Anna Liza, and, in an instant, inserted his penis in her vagina. As he was doing so, accused kissed Anna Liza’s breast. Anna Liza fought back and resisted such bestiality by kicking him, but to no avail. She even pushed her younger sister who was asleep just to wake her up. Anna Liza’s resistance, however, was in vain as accused successfully penetrated his penis inside Anna Liza’s vagina. This caused Anna Liza to bleed in pain. Accused stopped only when he had satisfied his lust. Thereupon, accused threatened Anna Liza not to tell others what happened between them; otherwise, he would kill her and her siblings. Helpless, Anna Liza acceded to her father’s threat and never reported the incident to anyone.

“On September 10, 11, and 12, 2000, about 11:00 o’clock in the evening, accused repeated what he had done to Anna Liza on 26 August 2000. On all of those three (3) occasions, accused succeeded in inserting his penis inside Anna Liza’s vagina against her will and consent. Similar sexual assaults were made on October 15, 16, and 27, 2000 in their house.

“On November 3, 8, and 9, 2000, accused-appellant again repeated his sexual molestation of Anna Liza. On those dates at early morning, accused entered Anna Liza’s vagina against the latter’s will.

“On December 25, 2000, around 10:00 o’clock in the evening, accused-appellant – for the eleventh (11th) time - sexually assaulted private complainant (Anna Liza). After the molestation, Anna Liza could only cry in helplessness.

“On January 8, 2001, around 9:00 o’clock in the evening, while Anna Liza was sleeping with her sister Josephine in their bedroom, accused woke her (Anna Liza) up, and again sexually assaulted her.

“Due to fear, Anna Liza did not report to anyone all the twelve (12) incidents of sexual molestation.

“However, unknown to Anna Liza, her Ate Mercy (wife of the complainant’s brother – Arnold Oden) witnessed the rape that took place on 08 January 2001. Ate Mercy saw through a small hole on the wall inside the house - separating her bedroom from that of Anna Liza’s – what accused had done to her (Anna Liza). And it was not only Ate Mercy who witnessed the rape. Arnold Oden (brother of Anna Liza) also saw what the accused had done to Anna Liza. Arnold was mad at accused; however he was not able to do anything because he, together with the rest of the siblings, were afraid of their father (accused) - the reason being that everytime accused would get angry, he would beat all of them.

“Nonetheless, Ate Mercy reported to a neighbor, Nanay Ludy, Anna Liza’s harrowing experience on 08 January 2001. In turn, Nanay Ludy talked to Anna Liza and directed her to report the incident to the barangay. Anna Liza heeded Nanay Ludy’s directive. She proceeded to the barangay - together with her Ate Mercy and Ate Marilou (wives of Anna Liza’s older brothers) - and reported her father’s outrageous wrongdoings. On 28 January 2001, based on Anna Liza’s sworn statement, the barangay officials, together with the police, arrested accused-appellant.”[2]

After the prosecution had rested its case with the testimony of its lone witness (the private complainant), Atty. Harley Padolina (PAO) manifested that the defense would not present any evidence.

On 18 March 2002, the trial court rendered a decision finding appellant guilty beyond reasonable doubt of twelve counts of rape; it adjudged:

“WHEREFORE, after a careful cursory on the case, the evidences presented by the prosecution which have remained unassailed by the defense due to the voluntary plea of guilty by the accused to all the offense charged, this Court finds said accused guilty beyond reasonable doubt and is hereby ordered to suffer the extreme penalty of death through lethal injection for each case. That said penalty shall be enforced upon the accused after a year and a half from the date said judgment shall have become final and executory or on the month of October 30, 2003 at 3:00 p.m.

“The court hereby award to private complainant as civil indemnity the amount of P75,000.00 as compensatory damages and the amount of P50,000.00 as moral damages.”[3]

In the review of his various cases by this Court, appellant asserts that his plea of guilty has been improvidently made on the mistaken belief that he would be given a lighter penalty with his plea of guilt.[4] On this particular score, the Solicitor General agrees.

There is merit in the observation.

Section 3, Rule 116, of the 2000 Rules of Criminal Procedure is explicit on the procedure to be taken when an accused pleads guilty to a capital offense, viz:

“SEC. 3. Plea of guilty to capital offense; reception of evidence. - When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.”

The trial court is mandated (1) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt, (2) to require the prosecution to still prove the guilt of the accused and the precise degree of his culpability, and (3) to inquire whether or not the accused wishes to present evidence on his behalf and allow him to do so if he desires. The records must show the events that have actually taken place during the inquiry, the words spoken and the warnings given, with special attention to the age of the accused, his educational attainment and socio-economic status, the manner of his arrest and detention, the attendance of counsel in his behalf during the custodial and preliminary investigations, and the opportunity of his defense

counsel to confer with him. All these matters should be able to provide trustworthy indices of his competence to give a free and informed plea of guilt. The trial court must describe the essential elements of the crimes the accused is charged with and their respective penalties and civil liabilities. It should also direct a series of questions to defense counsel to determine whether or not he has conferred with the accused and has completely explained to him the legal implications of a plea of guilt.[5]

The process is mandatory and absent any showing that it has been duly observed, a searching inquiry cannot be said to have been aptly undertaken.[6] The trial court must be extra solicitous to see to it that the accused fully understands the meaning and importance of his plea. In capital offenses[7] particularly, life being at stake, one cannot just lean on the presumption that the accused has understood his plea.[8]

While the records of the case are indeed bereft of any indication that the rule has sufficiently been complied with, the evidence for the prosecution outside of the plea of guilt, nevertheless, would adequately establish the guilt of appellant beyond reasonable doubt.[9] The manner by which the plea of guilt is made, whether improvidently or not, loses much of great significance where the conviction can be based on independent evidence proving the commission by the person accused of the offense charged.[10]

The prosecution presented at the witness stand Anna Liza. She recounted straightforwardly and in sufficient detail the twelve harrowing and humiliating incidents of rape she had suffered in the hands of her own father. She testified:

“Q

Now, Miss witness, considering that your father admitted his guilt in all your accusations against him on those various dates against him, on August 26, 2000 as alleged in the information, you claimed that your father raped you, at about what time was that?

“A

About 2:00 o’clock in the early morning, sir.

“Q

How did your father able to rape you in that early morning of August 26, 2000?

“COURT

Wait fiscal for awhile.

“Q

So, in one room, you sleep with your sister and your father?

“A

Yes, your Honor.

“Q

But your father sleeps on the floor but you and [your] sister sleep on the bed?

“A

Yes, your Honor.

“COURT

Continue, fiscal.

“PROSECUTOR PASCUAL

“Q

So, how did your father able to rape you in that early morning of August 26, 2000?

“A

He woke me up at 2:00 o’clock in the morning and he told me that he is going to use me, sir.

“Q

And what happened next?

“A

And he told me that it will only take for awhile, sir.

“Q

And what happened next?

“A

And he promised that he will not do it again, sir.

“Q

Why? What did your father do when he promised that he will never do it again?

“A

He raped me, sir.

“Q

How did he rape you?

“A

He undressed me and then, he inserted his penis in my vagina, sir.

“Q

Did he kiss you?

“A

He kissed me in my breast, sir.

“COURT:

Put on record that while narrating the incident, the child is crying.

“PROSECUTOR PASCUAL:

“Q

So, you mean to say on that particular date and time, your father raped you?

“A

Yes, sir.

“Q

For how long did it take your father able to rape you on that early morning of August 26, 2000?

“A

It took only for a while, sir.

“Q

Did you not fight or shout?

“A

No, sir.

“Q

Why?

“A

He told me that if I will shout, he will kill me, sir.

“Q

In what particular portion of the house that your father was able to rape [you] in that early morning of August 26, 2000?

“A

Beside the bed (`sa gilid ng kama’), sir.

“COURT

And you sleep beside your sister?

“WITNESS

Yes, sir.

“COURT

How old are you?

“WITNESS

I’m 14 years old now, your Honor.

“COURT

Before?

“WITNESS

13 years old, your Honor.

“COURT

She did not wake up, your sister did not wake up?

“WITNESS

No, your Honor.

“COURT

Did you fight back?

“WITNESS

Yes, your Honor, I resisted.

“COURT

How did you resist?

“WITNESS

I was pushing my sister to wake her up but she was not awakened, your Honor.

“COURT

And what else did you do?

“WITNESS

I was kicking him, your Honor.

“COURT

Then what happened when you kicked him?

“WITNESS

He dressed up, your Honor.

“COURT

Proceed, fiscal.

“FISCAL PASCUAL

“Q

At what point in time did you kick your father, before he inserted his penis in your vagina or after he has inserted his penis in your vagina?

After having inserted his penis, sir.

“COURT

How many times did your father inserted his penis to your vagina?

“WITNESS

Twice, your Honor.

“COURT

Were you hurt?

“WITNESS

Yes, your Honor.

“COURT

Did it bleed?

“WITNESS

Yes, your Honor.

“COURT

Was that the first time that you had sexual encounter with a man?

“WITNESS

Yes, your Honor.

“COURT

So, it was your father whom you had first sex with?

“WITNESS

Yes, your Honor.

“COURT

Proceed, fiscal.

“PROSECUTOR PASCUAL

“Q

Then after this first incident of having been raped by your father?

“COURT

Wait, fiscal, just for awhile. Then, after you have kicked your father, he dressed up?

“WITNESS

Yes, your Honor.

“COURT

Did you not try to report the incident to anyone?

“WITNESS

No, your Honor.

“COURT

Why?

“WITNESS

Because he threatened to kill us all, your Honor.

“COURT

Proceed, fiscal.

“PROSECUTOR PASCUAL

“Q

Now, after this first incident that you claimed you were raped by your father, did he repeat the rape?

“A

Yes, sir.

“Q

When did your father again rape you?

“A

September 10, 11, and 12, 2000, sir.

“Q

And at about what time the alleged three (3) rape incidents?

“A

On September 10, 2000, 11:00 P.M., and the same on September 11 & 12, 2000, sir.

“Q

And he succeeded in raping you on September 10, 11, & 12, 2000?

“A

Yes, sir.

“Q

And of those three occasions that you claimed that you were raped by your father, how did your father able to rape you?

“A

The same thing as he did the first time, sir.

“Q

How about on September 11, 2000?

“A

Just the same, just a repetition of what he did on the first time, sir.

“Q

And also on the 12th of September 2000, the same?

“A

Yes, Sir.

“Q

And when did your father again rape you?

“A

November 3, 8, & 9, 2000, sir.

“Q

And how did your father able to rape you on those three (3) dates that you have mentioned?

“A

The same, sir, on November 3, early in the morning and on November 8 & 9, early in the morning also, sir.

“Q

And he did the same in raping you as in the previous incident?

“A

Yes, sir.

“COURT

Did he make you do other unusual things?

“WITNESS

None, your Honor.

“PROSECUTOR PASCUAL

“Q

In the month of October, do you recall having been raped by your father?

“A

I could not recall, sir.

“Q

How about in December, was your father also able to rape you?

“A

Yes, sir. I told him that I will sleep in the house of my brother.

“Q

And what did your father do when you informed him that you will sleep in the house of your brother?

“A

He got angry and he told me that we have our house why do we have to sleep to somebody's house, sir.

“Q

What happened next?

“A

He again repeated what he did to me, sir.

“Q

When was that?

“A

December 25, 2000, sir.

“Q

Where?

“A

Also our house, sir.

“Q

So, you mean to say, you went with your father when he fetched you on the house of your brother?

“A

No, sir, he just told us to go home to our house, sir.

“Q

And what time was your father able to rape you as you claimed on December 25, 2000?

“A

10:00 o’clock in the evening, sir.

“Q

And where was your brother at the time he raped you?

“A

In their house, sir.

“Q

So, you were alone with your father in your house on December 25, 2000?

“A

Yes, sir, and with my sister.

“Q

What is the name of your sister?

“A

Josephine, sir.

“Q

And where was Josephine at that time as you claimed your father raped you?

“A

Also beside me sleeping, sir.

“Q

What did she do?

“A

Sleeping, sir.

“Q

And for how long did your father rape you on December 25, 2000?

“A

Only for awhile, sir.

“Q

And what did you do after having been raped by your father?

“A

I cried, sir.

“Q

And, was this molestation to you by your father again repeated?

“A

Yes, sir.

“Q

When was that?

“A

January 8, 2001, sir.

“Q

Where did your father again rape you as you claimed?

“A

Also in our house, sir.

“Q

At about what time?

“A

About 9:00 o'clock in the evening, sir.

“Q

And at that time, where are your brothers and sisters?

“A

They were sleeping in their house, sir.

“Q

And who were with you at that time as you claimed you were raped by your father?

“A

My sister Josephine Oden, sir.

“Q

And what was Josephine doing at that time?

“A

She is also asleep and I was again kicking her but she did not awake, sir.

“Q

And how did your father again able to rape you on January 8, 2001?

“A

I wore my pants and so he would not be able to rape me but he told me that even how many pants I will wear, he will do it again, sir.

“Q

In all these molestations done to you by your father, did you report to anybody?

“A

No, sir.

“Q

Why did you not report to anybody these molestations of your father to you?

“A

I was afraid, sir.

“Q

Do you know if any members of your family know this alleged molestations?

“A

Yes, sir.

“Q

Who among the members of your family knows the alleged molestation or rape?

“A

Ate Mercy, sir.

“Q

How did your Ate Mercy able to know the incident?

“A

There was a small hole in the room and she peeped in that hole and she [saw] what my father is doing to me, sir.

“COURT

When was that?

“WITNESS

January 8, 2001, your Honor.

“PROSECUTOR PASCUAL

“Q

Where was your Ate Mercy at that time?

“A

Inside their room, sir.

“Q

By the way, who is the husband of your Ate Mercy?

“A

My brother Arnold Oden, sir.

“Q

And how did you come to know that your Ate Mercy peeped thru that hole and saw what was your father doing to you?

“A

She told me, sir.

“Q

And what did your Ate Mercy do when she saw what your father was doing to you?

“A

She let my brother see it by peeping [in] the hole and my brother got angry to my father, sir.

“Q

And what did your brother do, if any?

“A

Nothing, just speak to me, sir.

“Q

What did your brother do with your father?

“A

None, sir, all my brothers are afraid of him.

“Q

How about [you], are you afraid of him?

“A

Yes, sir.

“Q

Why are you afraid of your father together with your brothers?

“A

Because if he got angry, he mauls us, sir.

“Q

He also mauls your brothers?

“A

Yes, sir.

“Q

Now, considering that the last incident was on January 8, 2001, was this again repeated?

“A

No, sir.

“Q

Why?

“A

Because our neighbor told me to report the incident to the barangay.

“Q

And who is this neighbor that you are referring to?

“A

Nanay Ludy, sir.

“Q

And how did your neighbor able to know about this incident?

“A

My sister-in-law told them, sir.

“Q

And, by reason of this information by your sister, your neighbor directed you to report to the barangay?

“A

Yes, sir.

“Q

And did you indeed report the incident to the barangay?

“A

Yes, sir.

“COURT

Who is your companion when you reported the incident to the barangay?

“WITNESS

Ate Mercy and Ate Marilou, your Honor.

“COURT

Who is this Ate Marilou?

“WITNESS

The wife of my other brother, your Honor.

“COURT

What is the name of your other brother who is the husband of Marilou?

“WITNESS

Roberto Oden, your Honor.

“COURT

Proceed, fiscal.

“PROSECUTOR FISCAL

“Q

And what did the barangay do when you reported this incident?

“A

On that evening, they went to our house, sir.

“Q

And who went to your house?

“A

The barangay together with the police, sir.

“Q

And what did the barangay officials and the police do, if any? When they went into your house?

“A

They arrested my father, sir.

“Q

And when your father was arrested by the police, what did you do?

“A

None, sir.

“Q

And where did they bring your father when they arrested him?

“A

In the jail, sir.

“Q

And when was that when your father was arrested by the police?

“A

January 28, 2001, sir.

“Q

Now, in connection with your complaint of various [incidents of] rape in your person by your father, were you investigated by the police?

“A

Yes, sir.

“Q

And did you give your statement to the police?

“A

Yes, sir.

“Q

And your statement was reduced in writing?

“A

Yes, sir.

“Q

And in your statement, you narrated all those incidents of rape that was done to you by your father?

“A

Yes, sir.

“Q

And have you read the statement you executed before the police?

“A

Yes, sir.

“Q

And did you affix your signature on the statement you have executed before the police?

“A

Yes, sir.

“Q

Do you still remember how many pages [constituted] this statement [as] typewritten by the police?

“A

Not anymore, sir.

“Q

Now, if that statement which you have given to the police will be shown to you, will you be able to identify the same?

“A

Yes, sir.

“Q

Now, I have here with me a typewritten statement of one Anna Liza Oden constituting of two (2) pages, will you kindly go over this statement and inform that Honorable Court, if what is the relation of this statement to the statement you have given to the police in connection with this incidents?

“A

This is the one, sir.

“Q

And on the second page of this sworn Statement which appear to be the continuation of the first page, will you kindly go over the same and tell the Honorable Court, if that is also your statement?

“A

Yes, sir.

“PROSECUTOR PASCUAL

For purposes of identification, may we request, your Honor, that the Sworn Statement identified by the witness be marked as Exhibit ‘B’ and the second page as Exhibit ‘B-1’.

“COURT

Mark them.

“PROSECUTOR PASCUAL

“Q

On the first page at the top portion of this Sworn Statement, there appears a printed name Anna Liza Oden Y Ailes and on top of the printed name, there appears a signature, whose signature is that?

“A

My signature, sir.

“PROSECUTOR PASCUAL

Which for purposes of identification, we would like to request, your Honor, that the signature of the witness on the first page be marked as Exhibit `B-2`.

“COURT

Mark it.

“PROSECUTOR PASCUAL

“Q

On the second page of this statement, there [is] likewise a signature [appearing] on top of the printed name Anna Liza Oden y Ailes,

“A

My signature, sir.

“PROSECUTOR PASCUAL

Same manifestation, your Honor, the signature of the witness on the second page at the bottom portion thereof be marked as Exhibit “B-3”.

“COURT

Mark it.

“PROSECUTOR PASCUAL

“Q

And who among your relatives assisted you in giving your statement to the police?

“A

Ate Mercy, sir.

“Q

So, you mean to say, your Ate Mercy was with you when you give your statement to the police?

“A

Yes, sir.

“Q

Now, at the left bottom portion of this Sworn Statement is a signature above the typewritten name Mercy Oden Y Onda, whose signature is this?

“A

Signature of Ate Mercy, sir.

“Q

How did you come to know that this is the signature of your Ate Mercy?

“A

I was [present] when she signed the same, sir.

“Q

And do you affirm and confirm the contents of your statement?

“A

Yes, sir.

“Q

Now, you said earlier that you cannot recall whether you were also raped by your father in the month of October, in your affidavit wherein you affirm and confirm the same, specifically on the second page, you also stated that you were also raped by your father on October 15, 16, & 27, 2000, do you affirm that?

“A

Yes, sir.

“Q

If you can recall, where were you raped by your father on those three (3) dates?

“A

I was in the house, sir.

“Q

And your father [was] able to rape you similar to the previous incidents and after the month of October that you were raped?

“A

Yes, sir.

“PROSECUTOR PASCUAL

I think , that will be all for the witness, your Honor.

“COURT

Cross.

“ATTY. PADOLINA

Just a few cross, your Honor.

“WITH THE KIND PERMISSION OF THE HONORABLE COURT.

“COURT

.

PROCEED

“ATTY. PADOLINA (On Cross Examination)

“Q

Miss Witness, you testified awhile ago that you are residing in your house together with your father, brothers Arnold, Alvin, Roberto and your sister Josephine?

“A

Yes, sir.

“Q

Now, Miss Witness, you said that these rape took place in the room where your sister was sleeping?

“A

Yes, sir.

“Q

Now, Miss Witness, are there any other room beside that room where you were sleeping with your sister and your father?

“A

Yes, sir.

“Q

And who sleeps there?

“A

Ate Mercy and my brother, sir.

“Q

How about the other side, there is a room also?

“A

Yes, sir, the one renting.

“Q

So, how many rooms are there surrounding your room where you were sleeping?

“A

Two (2), sir.

“Q

Now, Miss Witness, according to you, on August 26, 2000 at about 2:00 A.M., you were first raped by your father is that correct?

“A

Yes, sir.

“Q

And according to you, you resisted by kicking him?

“A

Yes, sir.

“Q

And it was after he had finished satisfying his lust, is that correct?

“A

Yes, sir.

“Q

How about at the time when he was [undressing] you, were you fighting?

“A

Yes, sir.

“Q

How were you able to fight?

“A

I was also kicking him, sir.

“Q

How about the time when he was inserting his penis?

“A

I was crying, sir.

“Q

You did not kick him at that time?

“A

I was kicking him, sir.

“Q

Now, Miss Witness, did you shout for help?

“A

No, sir.

“Q

Now, Miss Witness, everytime he finished after satisfying his lust, what did you do?

“A

I just cried, sir.

“Q

You did not tell anybody about that, Miss Witness?

“A

Yes, sir.

“Q

Are you studying during that time?

“A

Yes, sir.

“Q

You did not tell that to your classmate or to your teacher?

“A

No, sir.

“Q

And also, all these things that happened on the same way that he did on September, October, December, and January, you did not tell to anybody?

“A

No, sir.

“Q

On those dates that I have mentioned, was he armed with any weapon?

“A

None, sir.

“Q

And all those things happened while your sister was sleeping with you?

“A

Yes, sir.

“Q

All those instances?

“A

Yes, sir.

“ATTY. PADOLINA

THAT WILL BE ALL, YOUR HONOR.

“COURT

Any re-direct.

“PROSECUTOR PASCUAL

May I be allowed to conduct additional direct examination, your Honor.

“COURT

You may proceed, fiscal.

“PROSECUTOR PASCUAL (ADDITIONAL DIRECT EXAMINATION)

“Q

Miss Witness, you claimed that the reason why you did not report immediately this incident was because you are afraid of your father?

“A

Yes, sir.

“Q

And you also claimed that all your brothers are also afraid [of] your father?

“A

Yes, sir.

“Q

Now, you have pointed to a skinny person inside this courtroom as your father, the accused in this case?

“A

Yes, sir.

“Q

Is that the kind of person whom you and your brothers are afraid of?

“A

Yes, sir.

“Q

Is that [the] size of the body of your father at the time he was [molesting] you?

“A

No, sir.

“Q

What is the size of the body of your father during the time he molested you?

“A

Bigger built than today, sir.

“Q

So, you mean to say because you are afraid [of] your father, your father can do whatever he wants to do inside your house?

“A

Yes, sir.

“Q

And because your brothers are also afraid [of] your father, he can do whatever he wants to do because during that time, your father has a big body?

“A

Yes, sir.

“PROSECUTOR PASCUAL:

I THINK THAT WILL BE ALL, YOUR HONOR.”[11]

In rape cases, the lone testimony of the victim, if credible and free from fatal and material inconsistencies and contradictions, can be the basis for the prosecution and conviction of an accused.[12] The rule can no less be true than when a rape victim testifies against her own father; unquestionably, there would be reason to give it greater weight than usual. In any event, matters affecting credibility are best left to the trial court with its peculiar opportunity to observe the deportment of a witness on the stand as against the reliance by an appellate court on the mute pages of the records of the case.[13] The spontaneity with which the victim has detailed the incidents of rape, the tears she has shed at the stand while recounting her experience, and her consistency almost throughout her account dispel any insinuation of a rehearsed testimony. The eloquent testimony of the victim, coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of her charges.

The death penalty, however, was indeed erroneously imposed. The Solicitor General conceded that the prosecution had failed to establish private complainant's age at the time of commission of the offenses. It was only the bare statement of the victim, when asked to describe her personal circumstances in the hearing held on 05 February 2002, that mention was made of her being merely 17 years of age.

The age of the victim, in order that this qualifying circumstance can be properly considered, needs to be credibly proved.[14] In *People vs. Javier*,[15] the Court explains:

“x x x Although the victim's age was not contested by the defense, proof of age of the victim is particularly necessary in this case considering that the victim's age which was then 16-years old [was] just two years less than the majority age of 18. In this age of modernism, there is hardly any difference between a 16-year old girl and an 18-year old one insofar as physical features and attributes are concerned. A physically developed 16-year old lass may be mistaken for an 18-year old young woman, in the same manner that a frail and young looking 18-year old lady may pass [for] a 16-year old minor. Thus, it is in this context that independent proof of the actual age of a rape victim becomes vital and essential so as to remove an iota of doubt that the victim

[was] indeed under 18 years of age as to fall under the qualifying circumstances enumerated in Republic Act No. 7659. In a criminal prosecution especially of cases involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established by the prosecution in order for said penalty to be upheld, x x x. Verily, the minority of the victim must be proved with equal certainty and clearness as the crime itself. Otherwise, failure to sufficiently establish the victim's age is fatal and consequently bars conviction for rape in its qualified form.”[16]

In *People vs. Galas*,[17] the Court has held:

“To justify the imposition of death, proof of the victim's age is indubitable. There must be sufficient and clear evidence proving her age, even if not denied by the accused. A duly certified certificate of his birth accurately showing the complainant's age or some other authentic document such as a baptismal certificate or a school record, has been recognized as competent evidence.

“While it may be true that the testimony of a person as to her age, although hearsay, is admissible as evidence of family tradition, we cannot consider Sharon's statement at the beginning of her testimony describing her personal circumstances as proof of age beyond reasonable doubt that we have considered indispensable in the criminal prosecution of cases involving the extreme penalty of death. No corroborative or supporting evidence was presented by the prosecution. Although a ‘certified transcription copy’ of a certificate of live birth of Sharon Galas is found on page 10 of the Record of the preliminary investigation held by the 16th Municipal Circuit Trial Court of Jordan, Guimaras, this document was not presented in evidence during the trial. Accordingly, it does not form part of the record of the case and not having been formally offered nor marked as an exhibit, it cannot be considered as evidence nor be given evidentiary value.”[18]

And thus, too, is the ruling of the Court in *People vs. Tipay*[19] -

“This does not mean, however, that the presentation of the certificate of birth is at all times necessary to prove minority. The minority of a victim of tender age who may be below the age of 10 is quite manifest and the court can take judicial notice thereof. The crucial years pertain to the ages of 15 to 17 where minority may seem to be indubitable due to one's physical appearance. In this situation, the prosecution has the burden of proving with certainty the fact that the victim was under 18 years of age when the rape was committed in order to justify the imposition of the death penalty under the above cited provision.

“The record of the case at bar is bereft of any independent evidence which would accurately show complainant's age. That complainant's age was alleged in the information and/or complaint as under 16 years is not sufficient. Nor does the lack of denial on the part of accused-appellant excuse the prosecution from discharging its burden in this regard.”[20]

It is the burden of the prosecution to prove with moral certainty the minority of the victim, i.e., below 18 years of age at the time of commission of rape, coupled with the requisite relationship, in order to justify the imposition of the death penalty.

Moral damages, in addition to civil indemnity, are awarded to rape victims. The father-daughter relationship between the accused and the rape victims also justifies the award of exemplary damages, a measure to help deter fathers with perverse tendencies and aberrant sexual behavior from preying upon and sexually abusing their daughters.[21]

WHEREFORE, the decision under review is **AFFIRMED** with **MODIFICATION**. Appellant Mario Oden is convicted of twelve (12) counts of simple rape and sentenced to reclusion perpetua for each count. Appellant is further ordered to indemnify Anna Liza Oden in the amount of Fifty Thousand Pesos (P50,000.00) civil indemnity, Fifty Thousand Pesos (P50,000.00) moral damages, and Twenty Thousand Pesos (P25,000.00)

exemplary damages for each count of rape.

SO ORDERED.

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

[1] Rollo, pp. 30-33.

[2] Rollo, pp. 86-89.

[3] Rollo, p. 38.

[4] Appellant's Brief, p. 57

[5] People vs. Nuelan, G.R. No. 123075, 08 October 2001, 366 SCRA 705; People vs. Mangila, G.R. Nos. 130203-04, 15 February 2000, 325 SCRA 586.

[6] People vs. Molina, G.R. Nos. 141129-33, 14 December 2001, 372 SCRA 378.

[7] People vs. Asoy, G.R. No. 132059, 29 June 2001, 360 SCRA 428.

[8] People vs. Nuellan, *supra*.

[9] Rollo, p. 93.

[10] People vs. Galas, G.R. Nos. 139413-15, 20 March 2001, 354 SCRA 722.

[11] TSN, pp. 8-31.

[12] People vs. Palermo, G.R. No. 120630, 28 June 2001, 360 SCRA 84.

[13] People vs. Velasco, G.R. Nos. 135231-33, 28 February 2001, 353 SCRA 138.

[14] People vs. Bataller, G.R. Nos. 134540-41, 18 July 2001, 361 SCRA 302.

[15] G.R. No. 126096, 26, July 1999, 311 SCRA 122.

[16] At p. 141.

[17] G.R. Nos. 139413-15, 20 March 2001, 354 SCRA 722.

[18] At pp. 734-735.

[19] G.R. No. 131472, 28 March 2000, 329 SCRA 52.

[20] At pp. 76-77.

[21] People vs. Bataller, 361 SCRA 302.

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