Supreme Court E-Library

WHEREFORE, the decision of the Regional Trial Court of Iloilo City, Branch 26, in Criminal Case No. 44764, is *AFFIRMED* with *MODIFICATIONS*. PO3 Gildo B. Pelopero alias "Edong," PO3 Erwin L. Fernandez, and Mamerto Pelopero alias "Mamie" are found GUILTY beyond reasonable doubt of Murder, and are sentenced to suffer the penalty of imprisonment consisting of an indeterminate sentence ranging from twelve years of *prision mayor* as *MINIMUM*, to twenty years of *reclusion temporal* as *MAXIMUM*, and to indemnify, jointly and severally, the heirs of the victim in the amounts of ₱50,000 as civil indemnity, ₱25,000 as temperate damages, and ₱25,000 as exemplary damages. Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J., Vitug and *Carpio, JJ.,* concur.

Ynares-Santiago, J., is on leave

EN BANC

[G.R. No. 130662. October 15, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SERGIO ABON *y* ESTEBAN,** *appellant.*

SYNOPSIS

Appellant Sergio Abon *y* Esteban was convicted of qualified rape by the Regional Trial Court of Urdaneta, Pangasinan, and was sentenced to suffer the supreme penalty of death. The complainant was appellant's own granddaughter. On automatic review, appellant assailed the credibility of the private complainant contending that the latter was motivated by ulterior motive in filing the rape complaint against him. Appellant also submitted that the unreasonable delay of 240 days or 8 months

Supreme Court E-Library

in reporting the rape incident to the authorities evinces that the charge is a mere fabrication.

The Supreme Court affirmed appellant's conviction but only for the crime of simple rape and was sentenced to suffer the penalty of *reclusion perpetua*. According to the Court, while it was duly established that appellant is the grandfather of complainant, the prosecution failed to prove that she was 13 years old when she was raped. No certificate of live birth or any authentic document was presented and offered in evidence to prove her age. The fact that there was no objection from the defense regarding her age could not be taken against appellant since it is the prosecution that has the burden of proving her age. The Court also rejected appellant's allegation of improper motivation in filing the complaint and gave full credence to the testimony of complainant whose declaration has sufficiently and convincingly proved that appellant had sexually abused her sometime in January 1995. The Court also held that complainant's delay in divulging what she knows, such as the identity of the offender, is not by itself a setback to the probative value of her testimony. What is important is that there is nothing to indicate that she had any improper motive to implicate appellant. Her revelation that she had been raped, coupled by her voluntary submission to medical examination and willingness to undergo public trial where she gave out the details of the assault on her dignity, cannot then be easily dismissed as mere concoction.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AN ACCUSED MAY BE CONVICTED ON THE SOLE BASIS OF THE VICTIM'S TESTIMONY IF IT SATISFIES THE TEST OF CREDIBILITY.**— In a prosecution for rape, the victim's credibility becomes the single most important issue, and when her testimony satisfies the test of credibility, an accused may be convicted solely on the basis thereof. Charito's declaration has sufficiently and convincingly proved that appellant had sexually ravished her sometime in January, 1995. Her direct and straightforward account of the harrowing incident could not be any clearer. During the cross-examination, Charito never wavered in her assertion that

Supreme Court E-Library

appellant raped her; that during the act, he placed his bolo on her neck; and that he threatened to oust her and her brother from his house. Certainly, a rape victim's testimony is entitled to great weight especially when she accuses a close relative of having ravished her. For there can be ascribed no greater motivation for a woman abused by her own kin than that innate yearning of the human spirit to declare the truth to obtain justice.

2. **ID.; ID.; ID.; CREDIBILITY IS NOT IMPAIRED BY THE *ALLEGED INCONSISTENCIES IN THE VICTIM'S* TESTIMONY REGARDING THE EXACT DATE AND COMMISSION OF THE RAPE; CASE AT BAR.**— The exact time or date of the commission of rape is not an element of the crime. What is decisive is that the commission of rape by the accused has been sufficiently proved. Inconsistencies and discrepancies as to minor matters irrelevant to the elements of the crime cannot be considered grounds for acquittal. In this case, the alleged inconsistency in Charito's testimony regarding the exact date and place of the commission of rape does not impair her credibility. In fact, no less than Alexander, Charito's brother, testified categorically that he saw appellant having sexual intercourse with his sister on the day in question

3. **ID.; ID.; ID.; MERE RETRACTION BY A WITNESS DOES NOT NECESSARILY VITIATE THE ORIGINAL TESTIMONY IF CREDIBLE.**— A mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible. The rationale for the rule is obvious: Affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Moreover, recanted testimony is exceedingly unreliable. There is always the probability that it will later be repudiated.

4. **ID.; ID.; ID.; DELAY IN DEVULGING THE IDENTITY OF THE OFFENDER IS NOT BY ITSELF A SETBACK TO THE PROBATIVE VALUE OF COMPLAINANTS TESTIMONY.**— Complainant's delay in divulging what she knows, such as the identity of the offender, is not by itself a setback to the probative value of her testimony. To reiterate, what is important is that there is nothing to indicate that Charito had any improper motive to implicate appellant. Here, a young girl's revelation that she had been raped, coupled by her voluntary submission to medical examination and willingness to undergo

Supreme Court E-Library

public trial where she gave out the details of the assault on her dignity, cannot be easily dismissed as mere concoction.

5. **CRIMINAL LAW; INCESTUOUS RAPE; ELEMENTS.**— The essential elements of incestuous rape are: (1) the offender had carnal knowledge of a woman; (2) the victim is under eighteen (18) years of age; and (3) 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.

6. **ID.; ID.; THE DEATH PENALTY CANNOT BE IMPOSED IN CASE AT BAR; MINORITY OF THE VICTIM WAS NOT SUFFICIENTLY ESTABLISHED.**— The prosecution has duly established that appellant is the grandfather of Charito. The appellant himself, in his direct testimony, categorically admitted that Charito is his granddaughter, she being the daughter of his son Nelson. However, the prosecution failed to prove that Charito was 13 years old when she was raped. No certificate of live birth or any authentic document was presented and offered in evidence to prove her age. The fact that there was no objection from the defense regarding her age could not be taken against appellant since it is the prosecution that has the burden of proving her age. Thus, in the absence of sufficient proof of Charito's minority, appellant cannot be convicted of qualified rape and sentenced to suffer the death penalty. He should only be convicted of simple rape and meted the penalty of *reclusion perpetua*.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Pedrito B. Labarinto for accused-appellant.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

For automatic review is the Decision[1] dated April 22, 1997 of the Regional Trial Court, Branch 47, Urdaneta, Pangasinan

[1] Penned by Judge Meliton G. Emuslan.

Supreme Court E-Library

in Criminal Case No. U-8671, convicting Sergio Abon *y* Esteban, appellant, of qualified rape and sentencing him to suffer the supreme penalty of death. He was ordered to pay the victim, Charito L. Abon, ₱50,000.00 as civil indemnity, ₱50,000.00 as moral and exemplary damages, and costs.

The Information charges appellant as follows:

"That on or about the month of January, 1995 at barangay Linmansangan, municipality of Binalonan, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the said accused who is the grandfather of the victim, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge on the person of Charito L. Abon, a woman of 13 years old, against her will.

"CONTRARY to Article 335, Revised Penal Code, as amended by Section 11, Rep. Act 7659."[2]

Upon arraignment on November 10, 1995, appellant, assisted by counsel, pleaded "not guilty." Trial ensued thereafter.

The evidence for the prosecution, as borne by the records, shows that complainant Charito Abon was born on September 29, 1982[3] to spouses Nelson and Felicidad "Emma" Lominoque Abon. But the couple separated, prompting Charito, her elder sister Laarni, and younger brother Alexander to live with their paternal grandparents, appellant and Alejandra Abon, at Barangay Linmansangan, Binalonan, Pangasinan. They provided for their support and education.

Sometime in January, 1995, at about 4:00 o'clock to 5:00 o'clock in the afternoon, appellant, Charito, then barely thirteen (13) years old, and Alexander were at their backyard gathering vegetables. Appellant instructed Alexander to buy cigarettes at the store. While Charito was harvesting some mangoes, appellant suddenly pulled down her shorts and drew his "*panabas*" (bolo). Frightened, she asked him what he was doing but he simply admonished her not to make any noise. He then proceeded to

---

[2] *Rollo* at 15.

[3] Transcript of Stenographic Notes (TSN), March 13, 1996 at 4.

Supreme Court E-Library

undress her and remove her panty. He also removed his shorts. Pointing the "*panabas*" to her, he ordered her to lie down. He placed himself on top of her, touched her breasts, and even forced her to hold his penis. Thereafter, he inserted his penis inside her vagina and sexually ravished her. She felt pain and dizziness. But still she tried to push him away. However, she was overpowered by his strength. After his bestial act, he dressed up and left for the farm.

Meanwhile, Alexander, who returned from the store, hid behind a mango tree. He saw both appellant and Charito naked, indulging in sexual activity. Scared, Alexander decided to go back to the store and then went home.

The next day, Charito informed her grandmother Alejandra that she was sexually molested by appellant. However, she refused to believe and even accused Charito of fabricating the incident. After a month, she stayed with her aunt Cristeta Bayno and revealed her traumatic experience to her.

On August 15, 1995, Cristeta brought Charito to Don Amadeo J. Perez, Sr. Memorial General Hospital at Urdaneta, Pangasinan. There, she was examined by Dr. Noel Obedoza who issued a Medical Certificate[4] with the following findings:

"(1) No sign of external physical injury such as abrasions, contusion and laceration on examination;

"(2) *Hymen is raptured with old healed laceration at 3-6 and 8 o'clock;*

"(3) Vaginal intoitus admit tip of a forefinger with minimal resistance;

"(4) Pregnancy test: negative (-)." (Italics supplied)

Dr. Obedoza confirmed on the witness stand that the lacerations at Charito's hymen were at 3, 6 and 8 o'clock positions and *more than two to three weeks old.*

Charito and her aunt reported the incident to the Binalonan Police Station, where she executed and signed a sworn statement.

[4] Exhibit "C", TSN, June 17, 1996 at 10-11.

Supreme Court E-Library

Eventually, she was brought to the Department of Social Welfare and Development in La Union.

The defense presented appellant, Alejandra, Alexander and his other granddaughter as witnesses. Appellant denied having raped Charito, whom he admitted is his own granddaughter, being the daughter of his son Nelson. He claimed that in January, 1995, (the alleged date when the rape was committed), Charito was in Manila. The filing of the rape charge against him was instigated by Cristeta Bayno, his wife's niece, who felt slighted after Francisco Novido, his brother-in-law, transferred the possession and cultivation of his land to him (appellant) in place of Cristeta. Charito denounced him because she resented being disciplined by him and his wife.

Alejandra Abon, appellant's wife, corroborated his testimony.

Alexander, Charito's brother, recanted his earlier testimony for the prosecution, explaining that he was instigated by their aunt Cristeta in testifying against appellant.

On April 22, 1997, the trial court rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, finding the accused SERGIO ABON *y* ESTEBAN GUILTY of the crime of incestuous rape under Article 335 of the Revised Penal Code, as amended by Section 11, Republic Act No. 7659, beyond reasonable doubt, he is hereby sentenced to suffer the supreme penalty of DEATH.

"In addition, he is ordered to pay the victim CHARITO ABON the sum of FIFTY THOUSAND (₱50,000.00) as indemnity, the sum of FIFTY THOUSAND (₱50,000 00) as moral damages and exemplary damages, and the costs.

"SO ORDERED."[5]

Hence, this automatic review.

Appellant, in his brief, ascribes to the trial court the following errors:

---

[5] *Rollo* at 36.

Supreme Court E-Library

"*FIRST*: THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE FACT THAT THE ACCUSED IS INNOCENT OF THE CRIME CHARGED.

"*SECOND*: THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE FACT THAT THERE IS ULTERIOR OR ILL MOTIVE ON THE PART OF THE PRIVATE COMPLAINANT AND CRISTETA T. BAYNO IN FILING THE RAPE COMPLAINT AGAINST THE ACCUSED.

"*THIRD*: THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THAT THE PROSECUTION'S EVIDENCE IS INSUFFICIENT TO SUPPORT CONVICTION OF THE ACCUSED.

"*FOURTH*: THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THAT THERE IS REASONABLE DOUBT AS TO THE TRUTH OF THE RAPE CHARGE, AND THAT THE DOUBT SHOULD BE RESOLVED IN FAVOR OF THE ACCUSED."

The law applicable to the case at bar is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,[6] which provides:

"Article 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by *reclusion perpetua*.

x x x x x x x x x

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by

---

[6] "An Act To Impose The Death Penalty On Certain Heinous Crimes, Amending For That Purpose The Revised Penal Code, As Amended, Other Special Penal Laws, And For Other Purposes," which took effect on December 31, 1993.

Supreme Court E-Library

consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

x x x x x x x x x."

Under the above provisions, the essential elements of incestuous rape are: (1) the offender had carnal knowledge of a woman; (2) the victim is under eighteen (18) years of age; and (3) 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.

Appellant, in assailing the evidence for the prosecution, contends that: (1) Charito admitted in the course of her testimony that at the time of the commission of the crime in January, 1995, she was actually in Metro Manila; (2) there is substantial delay of 240 days or 8 months before she reported the crime to the proper authorities; (3) the prosecution failed to establish his guilt beyond reasonable doubt because its witness Alexander recanted his testimony; (4) the results of Charito's physical examination negate the finding that she was raped; and (5) the filing of the complaint was instigated by Charito's aunt.

In a prosecution for rape, the victim's credibility becomes the single most important issue, and when her testimony satisfies the test of credibility, an accused may be convicted solely on the basis thereof.[7]

The trial court, in giving full credence to Charito's testimony, held:

"This Court observed the deportment and demeanor of the complainant when she testified on the witness chair. She uncontrollably cried while narrating her unfortunate experience. She appeared candid and honest in her testimony; unsophisticated and so young. She claimed to have been born on 29 September 1982, which claim was never rebutted by the accused. It would appear that when she was allegedly sexually abused, she was less than thirteen years old. She was only in elementary school.

---

[7] *People vs. Ruben Dalisay*, G.R. No. 133926, August 6, 2003, citing *People vs. Agustin*, 365 SCRA 667 (2001).

Supreme Court E-Library

"She was subjected to thorough, extensive and rigid cross-examination for three settings, but her testimony remained unshaken. While there may have been some inconsistencies and contradictions in her testimony, these were expected considering her juvenility and inexperience and her apparent inability to grasp the cross-examination questions."

Indeed, Charito's declaration has sufficiently and convincingly proved that appellant had sexually ravished her sometime in January, 1995. Her direct and straightforward account of the harrowing incident could not be any clearer, thus:

"x x x x x x x x x

"Q. Sometime in the month of January, 1995, do you recall if there was any unusual incident that happened to you at your place?

x x x x x x x x x

A. Yes, sir.

Q. What was that all about?

A. I was raped by my grandfather, sir.

Q. What is the name of your grandfather?

A. Sergio Abon, sir.

Q. If Sergio Abon whom you claimed raped you sometime in the month of January, 1995 is now inside the courtroom, kindly stand up and point to said accused?

A. Witness stood up and pointed to a person who when asked of his name, answered Sergio Abon.

Q. You said that Sergio Abon raped you, where did he rape you?

A. At the back of our house, sir.

Q. And what time of the day if you remember?

A. In the afternoon, sir.

Q. About what time did he rape you?

A. Between 4:00 o'clock to 5:00 o'clock in the afternoon.

Supreme Court E-Library

Q. You said Madam Witness, that your grandfather raped you at the back of your house between the hours of 4:00 to 5:00 p.m., how did your grandfather rape you?

A *He undressed me, sir.*

Q You said 'he undressed me,' tell us if your grandfather removed your clothes including your panty is that what you mean?

A. Yes, sir.

Q. And what happened after Sergio Abon removed your clothes and your panty?

x x x x x x x x x

A. He went on top of me and he raped me.

x x x x x x x x x.[8]

Q. x x x what do you mean by 'he raped you'?

A. Sergio Abon undressed me then he was on top. What I meant by 'he raped me,' he put his penis on my private part, sir.

x x x x x x x x x

Q. What do you mean by your alleged testimony that Sergio Abon put his penis inside your private part?

A. When he was on top of me he put his penis inside my vagina.

Q. And what did he do after he put his penis inside your vagina?

A. He pushed and pulled. (Witness demonstrating the motion of pumping, moving up and down, push and pull).

Q. How long did the accused make a push and pull or pumping motion?

A. Quite short time, sir.

Q. And what did you do when the accused was making the pumping motion of push and pull motion while he was on top of you and his penis was inside your vagina?

A. He was holding my hand and he was on top of me. I was pushing him but he was strong.

---

[8] TSN, March 6, 1996 at 3-10.

Supreme Court E-Library

Q. What happened after that?

A. He dressed up before he left the place.

Q. What did you feel after you experienced his penis inside your vagina and made a pumping motion and after the accused dressed up?

A. I felt pain and felt dizzy, sir.

x x x x x x x x x."[9]

During the cross-examination, Charito never wavered in her assertion that appellant raped her; that during the act, he placed his bolo on her neck; and that he threatened to oust her and her brother from his house, thus:

"Q. Last time also Madam Witness, you testified that your grandfather Sergio Abon raped you at the back of your house, my question is, what particular place at the back of your house were you raped by your grandfather, the accused herein?

A. Right at the back of the house and sometimes inside our house, sir.

Q. How many times were your raped by your grandfather?

A. He raped me once, sir.

x x x x x x x x x

Q. Now, you also said that your grandfather undressed you, where did your grandfather undress you?

A. In the fields, sir.

Q. Will you demonstrate before this Honorable Court how your grandfather undressed you or how he removed your clothes?

A. When I was then standing picking up mango fruits, my grandfather removed my shorts.

Q. How did he remove your shorts Madam Witness, will you please demonstrate to us?

A. When I was standing, he suddenly pulled down my shorts and then suddenly, he drew his '*panabas*' and pointed it to me.

---

[9] TSN, March 13, 1996 at 1-3.

Supreme Court E-Library

x x x x x x x x x

Q. And after your grandfather pulled down you shorts with garter, will you demonstrate to us the other things that happened?

A. He just told me to lie down and when I asked him what is he doing, he just replied 'just lie down' and I was then crying.

x x x x x x x x x

Q. x x x, when you lied down, where was your grandfather Sergio Abon?

A. He went on top of me, sir.

x x x x x x x x x

Q. Now, what was the appearance of your grandfather when he went on top of you?

A. He touched my breasts, sir.

Q. Was that the only thing he did to you, Madam Witness?

A. He then told me to hold his penis.

Q. Did you touch his penis, Madam Witness?

A. I did not touch his penis, sir. But he placed his '*panabas*' on my neck, forcing me to hold his penis.

x x x x x x x x x

Q. And when your grandfather went on top of you, what did he tell you while he was on top of you?

A. He told me not to tell to anybody what happened or else he threatened that my brother and I will be kicked out of his house.

x x x x x x x x x."[10]

Certainly, a rape victim's testimony is entitled to great weight especially when she accuses a close relative of having ravished her.[11] For there can be ascribed no greater motivation for a

[10] TSN, April 29, 1996 at 10-18.

[11] *People vs. Ruben Dalisay, supra* at 14, citing *People vs. Sagarino*, 364 SCRA 438 (2001).

Supreme Court E-Library

woman abused by her own kin than that innate yearning of the human spirit to declare the truth to obtain justice.[12]

However, appellant insists that he could not have committed the crime considering that Charito admitted during the cross-examination that she stayed with her aunt Remedios Novido in Manila from December, 1994 up to March, 1995, in effect negating the trial court's finding that she was sexually abused by appellant at Binalonan, Pangasinan sometime in January, 1995.

The exact time or date of the commission of rape is not an element of the crime. What is decisive is that the commission of rape by the accused has been sufficiently proved. Inconsistencies and discrepancies as to minor matters irrelevant to the elements of the crime cannot be considered grounds for acquittal.[13] In this case, the alleged inconsistency in Charito's testimony regarding the exact date and place of the commission of rape does not impair her credibility.

In fact, no less than Alexander, Charito's brother, testified categorically that he saw appellant having sexual intercourse with his sister on the day in question, thus:

"x x x x x x x x x

Q. Do you recall of any incident that happened to your sister Charito Abon sometime in January 1995?

A. Yes, sir.

Q. What was that incident that happened to your sister?

A. She was raped, sir.

Q. You said your sister Charito Abon was raped, who raped her?

A. Sergio Abon, sir.

Q. You claimed that your sister Charito Abon was raped by the accused Sergio Abon, where did Sergio Abon rape your sister?

A. At the back of our house, sir.

---

[12] *Id.*

[13] *People vs. Artemio Invencion y Soriano*, G.R. No. 131636, March 5, 2003.

Supreme Court E-Library

Q. What time did the accused rape your sister?

A. In the afternoon, sir.

Q. You said your sister was raped at the back of your house, where in particular in that place?

A. Near the place where we are taking rice, sir.

Q. Where were you at the time when Charito Abon was being raped by the accused Sergio Abon?

A. I was at the mango tree, sir.

Q. Why were you at the mango tree at that time?

A. I was hiding, sir.

Q. How far is that mango tree where you were hiding to the place where your sister Charito Abon was raped by the accused?

A. Maybe at the door of the courtroom from the witness stand [witness indicating a distance of more or less eight (8) meters].

x x x x x x x x x

Q. You said you witnessed the incident, will you tell us how Sergio Abon raped your sister Charito Abon?

A. When Sergio Abon asked me to buy cigarette I heeded his order and I bought cigarette and upon returning I saw Sergio Abon on top of my sister, so I hid behind the mango tree because I was afraid to go near them, sir.

Q. What was the physical appearance of Sergio Abon when he was raping your sister Charito Abon?

A. He was naked, sir.

Q. How about your sister?

A. She was naked too, sir.

Q. When you saw the accused Sergio Abon naked and you also saw your sister naked what did Sergio Abon do to your sister?

A. She was raping my sister, sir. He was having sex with my sister, sir.

Supreme Court E-Library

Q. How did your grandfather have sex with your sister? Was your sister lying down at the time when she was being raped by your grandfather, the accused?

A. Yes, sir.

Q. And when you said Sergio Abon had sex with your sister, the accused was on top of your sister?

A. Yes, sir.

Q. How many times did your grandfather Sergio Abon rape your sister?

A. Only one time, sir.

x x x x x x x x x"[14]

But appellant discredits the above testimony because Alexander retracted. A mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible.[15] The rationale for the rule is obvious: Affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Moreover, recanted testimony is exceedingly unreliable. There is always the probability that it will later be repudiated.[16]

On appellant's contention that the results of the physical examination on Charito belie the charge that the crime was committed sometime in January, 1995, suffice it to state that Dr. Obedoza, emphatically testified that the old healed hymenal lacerations were "*more* than two to three weeks old"[17] from the date of examination.

The alleged ulterior motive of Charito in testifying against his grandfather also deserves scant consideration. As correctly observed by the Solicitor General:

---

[14] TSN, January 29, 1996 at 5-9.

[15] *Virgilio Santos vs. People*, G.R. No. 147615, January 20, 2003, citing *People vs. Dulay*, 217 SCRA 103 (1993).

[16] *Id.*, citing *Lopez vs. Court of Appeals*, 239 SCRA 562 (1994).

[17] TSN, June 17, 1996 at 24.

Supreme Court E-Library

"Appellant argues that Charito filed a rape complaint against him because of ill feelings, hatred and jealousy against him and his wife who tried to discipline her to be a good child, but Charito however, refused to be disciplined and was stubborn and hard-headed.

"x x x x x x x x x

"Even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to concoct a story of defloration, which would put her grandfather's liberty and life in peril and drag herself to a lifetime of shame. (*People vs. Sangil*, 276 SCRA 532; *People vs. Silvano*, G.R. No. 127356, June 29, 1999)."[18]

Appellant also submits that the unreasonable delay of 240 days or 8 months in reporting the rape incident to the authorities evinces that the charge is a mere fabrication.

We are not convinced. The Solicitor General prudently observed:

"When the rape happened, Charito was a 13-year old unsophisticated *barrio* lass who was living with appellant and dependent upon him for support. At first, she admitted the commission of the rape to Alexander when the latter confronted her. The morning after the rape incident, she revealed the same to her grandmother, wife of appellant, but her grandmother would not believe her.

"After Charito fled her grandparents' house, she reported the rape to her aunt, Cristeta Bayno, who immediately accompanied her to the police authorities and to a physician for gynecological examination.

"Considering the foregoing, there was therefore no unreasonable delay in revealing the molestation to the police authorities. Charito immediately reported the same to a relative (grandmother) who did not mind the same probably because of the scandal it might create. The delay in reporting the matter to the police was caused by the grandmother's refusal to believe Charito's account of rape. Indeed, it would be quite unnatural for a 13-year old unsophisticated *barrio* lass to go straight to the police authorities to reveal the defloration which her grandfather did to her."

---

[18] Appellee's Brief, *Rollo* at 252-253.

Supreme Court E-Library

And so, complainant's delay in divulging what she knows, such as the identity of the offender, is not by itself a setback to the probative value of her testimony.[19] To reiterate, what is important is that there is nothing to indicate that Charito had any improper motive to implicate appellant. Here, a young girl's revelation that she had been raped, coupled by her voluntary submission to medical examination and willingness to undergo public trial where she gave out the details of the assault on her dignity, cannot be easily dismissed as mere concoction.

In *People vs. Ocumen*,[20] we emphasized that "the qualifying circumstances of *minority* and *relationship* must concur. As these circumstances, if proven, raise the penalty of the crime to death, great caution must be exercised in their evaluation. For these circumstances to be appreciated, both must be specifically *alleged* in the Information and *duly proved* during the trial with equal certainty as the crime itself.

Here, it is undisputed that the minority of the victim — that she was 13 years old when she was raped in January 1995 — and appellant's relationship with the victim — that he is complainant's grandfather — have been alleged in the Information.

But, were these qualifying circumstances of minority and relationship sufficiently established during the trial?

The prosecution has duly established that appellant is the grandfather of Charito.[21] The appellant himself, in his direct testimony, categorically admitted that Charito is his granddaughter, she being the daughter of his son Nelson.[22]

However, the prosecution failed to prove that Charito was 13 years old when she was raped. No certificate of live birth or any authentic document was presented and offered in evidence

---

[19] *People vs. Victor Balili y Libot*, G.R. No. 125908, September 5, 2002.

[20] G.R. No. 135559, September 17, 2003, citing *People vs. Padilla*, 355 SCRA 741 (2001).

[21] TSN, March 6, 1996 at 3; January 29, 1996 at 4.

[22] TSN, November 14, 1996 at 7-8.

Supreme Court E-Library

to prove her age. The fact that there was no objection from the defense regarding her age could not be taken against appellant since it is the prosecution that has the burden of proving her age.[23]

Thus, in the absence of sufficient proof of Charito's minority, appellant cannot be convicted of qualified rape and sentenced to suffer the death penalty. He should only be convicted of simple rape and meted the penalty of *reclusion perpetua.*

As regards the civil liability of appellant, the trial court's award of ₱50,000.00 as moral and exemplary damages is erroneous.

In line with current jurisprudence, where, as here, the death penalty is not imposed, the victim should be entitled to ₱50,000.00 as indemnity *ex delicto*. Such award is mandatory upon the finding of the fact of rape.[24] We likewise award the victim moral damages which is fixed at ₱50,000.00 without need of pleading or proof of basis thereof.[25] In addition, exemplary damages of ₱25,000.00 is awarded to deter grandfathers with aberrant sexual behavior.[26]

WHEREFORE, the Decision of the Regional Trial Court, Branch 47, Urdaneta, Pangasinan, in Criminal Case No. U-8671, is hereby *AFFIRMED* with *MODIFICATION* in the sense that appellant Sergio Abon *y* Esteban is found guilty beyond reasonable doubt of *simple rape* and is sentenced to suffer the penalty of *reclusion perpetua*. He is ordered to pay the victim, Charito L. Abon, ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱25,000.00 as exemplary damages.

---

[23] *People vs. Ruben Dalisay, supra* at 18.

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

[25] *People vs. Baroy*, G.R. Nos. 137520-22, May 9, 2002.

[26] *People vs. Ruben Dalisay, supra* at 19, citing *People vs. Salalima*, 363 SCRA 193 (2001) and *People vs. Docena*, 379 Phil. 903 (2000).

Supreme Court E-Library

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Carpio, Austria-Martinez, Carpio Morales, Callejo, Sr., Azcuna and *Tinga, JJ.*, concur.

Ynares-Santiago, J., on official leave.

Corona, J., is on leave.

EN BANC

[G.R. No. 138364. October 15, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROGELIO VILLANUEVA,** *appellant.*

SYNOPSIS

Appellant Rogelio Villanueva was found guilty by the trial court of raping his fifteen (15)-year old daughter and was sentenced to suffer the supreme penalty of death. On automatic review, appellant imputed grave error to the trial court in finding him guilty beyond reasonable doubt of rape defined and penalized under Art. 335 of The Revised Penal Code, as amended by RA 7659, and in imposing upon him the extreme penalty of death.

The Supreme Court affirmed appellant's conviction, but modified the death penalty imposed by the trial court by imposing the lesser penalty of *reclusion perpetua*. The Court found no independent evidence on record that could accurately show the age of the victim. The Court emphasized that failure to sufficiently establish the victim's age will bar any finding of rape in its qualified form. The Court then gave the benefit of the doubt to the appellant in view of the confusion as to the